

No. 25-2120

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

NATIONAL TPS ALLIANCE, et al.,
Appellees,

v.

KRISTI NOEM, et al.,
Appellants.

On Appeal from the United States District Court
for the Northern District of California
District Court Case No. 3:25-cv-1766

EXCERPTS OF RECORD

VOLUME 3

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

NATIONAL TPS ALLIANCE, MARIELA
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M.H., CECILIA DANIELA GONZÁLEZ
HERRERA, ALBA CECILIA PURICA
HERNÁNDEZ, E.R., and HENDRINA VIVAS
CASTILLO,

Plaintiffs,

vs.

KRISTI NOEM, in her official capacity as
Secretary of Homeland Security, UNITED
STATES DEPARTMENT OF HOMELAND
SECURITY, and UNITED STATES OF
AMERICA,

Defendants.

Case No. 3:25-cv-01766-EMC

**PLAINTIFFS' REPLY IN SUPPORT OF
THEIR MOTION TO POSTPONE
EFFECTIVE DATE OF AGENCY ACTION**

Assigned to: Hon. Edward M. Chen

Date: March 24, 2025

Time: 9:00 a.m.

Place: Courtroom 5, 17th Floor

Complaint filed: February 19, 2025

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INTRODUCTION

The orders Plaintiffs challenge will strip over 350,000 Venezuelan TPS holders of the right to live and work here in *less than a month*, placing them at immediate risk of detention and deportation. Once implemented, no final ruling could unwind their catastrophic social and economic impact. In contrast, Defendants face no concrete harm from relief that preserves the status quo.

Defendants claim “‘statutorily implicit’ authority to reconsider any TPS-related determination,” Opp. 6, but ignore Ninth Circuit precedent that defeats their argument. Mot. 4–8. Agencies do not enjoy unfettered vacatur authority where, as here, Congress establishes a “fixed term” for a benefit. *China Unicom (Ams.) Operations Ltd. v. FCC*, 124 F. 4th 1128, 1148 (9th Cir. 2024). Nor is there a historical basis for such implicit authority. In TPS’s thirty-five-year history, no Secretary had ever rescinded an extension before this. Defendants also ignore direct evidence that discrimination animated these decisions: Secretary Noem called Venezuelans “dirt bags” when announcing *this very decision*. Ex. 14 at 3.¹ The direct and circumstantial evidence of the Secretary’s animus satisfies any standard for establishing unlawful discrimination.

Defendants insist this Court lacks jurisdiction to review even blatantly illegal agency action, saying this Motion is a disguised request for a preliminary injunction barred by 8 U.S.C. § 1252(f)(1). But every court to consider that argument has rejected it. Relief under the APA renders agency action ineffective; it does not enjoin persons. Defendants’ TPS-specific jurisdictional argument is also meritless. Courts have uniformly recognized that “determination” is a term of art. It does not foreclose claims challenging unlawful processes and discrimination.

ARGUMENT

I. THIS COURT HAS JURISDICTION AND AUTHORITY TO GRANT RELIEF.

A. 8 U.S.C. § 1252(f)(1) Does Not Bar Postponement Under 5 U.S.C. § 705.

Section 1252(f)(1) “generally prohibits lower courts from entering *injunctions* that order federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out” [certain immigration statutes]. *Garland v. Aleman Gonzalez*, 596 U.S. 543, 550 (2022) (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 481 (1999) (Section

¹ All “Ex.” and “Exs.” references are to the Exhibits attached to Dkt. 37 (MacLean Decl.).

1 1252(f) “nothing more or less than a limit on injunctive relief”).

2 Every court to consider the question—including the Fifth Circuit and at least five district
3 courts—has rejected Defendants’ view that APA relief is functionally an injunction barred by
4 Section 1252(f)(1). *Texas v. United States*, 40 F.4th 205, 219–20 (5th Cir. 2022) (holding Section
5 1252(f)(1) “does not apply to vacatur” and, thus, DHS “unlikely to demonstrate” a lack of
6 “jurisdiction to vacate unlawful agency action”); *Kidd v. Mayorkas*, 734 F. Supp. 3d 967, 987 (C.D.
7 Cal. 2024) (Section 1252(f) inapplicable because vacating ICE policy neither “compels nor restrains
8 further agency decision-making”) (citation omitted); *Florida v. United States*, 660 F. Supp. 3d 1239,
9 1284–85 (N.D. Fla. 2023) (Section “1252(f)(1) does not strip [the Court] of the authority to vacate
10 either of the challenged policies under the APA.”); *Al Otro Lado, Inc. v. Mayorkas*, 619 F. Supp. 3d
11 1029, 1045–46 (S.D. Cal. 2022) (Section 1252(f)(1) does not prevent “‘set[ting] aside’ or ‘vacating’
12 a policy based upon an APA violation”), *aff’d in part, vacated in part sub nom., Al Otro Lado v.*
13 *Exec. Off. for Immigr. Rev.*, 120 F.4th 606 (9th Cir. 2024); *Immigrant Defs. L. Ctr. v. Mayorkas*,
14 2023 WL 3149243, at *14 (C.D. Cal. Mar. 15, 2023) (Section 1252(f)(1) “did not bar” vacatur);
15 *Texas v. Biden*, 646 F. Supp. 3d 753, 768 (N.D. Tex. 2022) (same).

16 Defendants cite *Biden v. Texas*, 597 U.S. 785 (2022) for support, *Opp.* 8, but *Biden* explicitly
17 reserved this question; *id.* at 801 n.4; and the district court on remand rejected Defendants’ view.
18 *Texas*, 646 F. Supp. 3d at 768. A vacatur under the APA is a “less drastic remedy” than a
19 preliminary injunction, *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010), and in this
20 motion Plaintiffs seek only a “Section 705 stay [which] can ... be seen as an interim or lesser form
21 of [relief than] vacatur” *Texas*, 646 F. Supp. 3d at 768. A postponement (or “stay”) under Section
22 705 “would not ‘order federal officials to take or to refrain from taking actions to enforce,
23 implement, or otherwise carry out the specified statutory provisions’ at issue”; it merely postpones
24 agency action from taking effect. *Id.* at 769. That is why “[w]hen a reviewing court determines that
25 agency regulations are unlawful, the ordinary result is that the rules are vacated—not that their
26 application to the individual petitioners is proscribed.” *East Bay Sanctuary Covenant v. Biden*, 993
27 F.3d 640, 681 (9th Cir. 2021).

28 Defendants nonetheless argue that APA relief “would have the effect of enjoining or

1 restraining DHS’s implementation” of the TPS statute. Opp. 7. But virtually all orders against the
2 government have the “effect” of restraining federal officials in some sense. If Section 1252(f)(1)
3 prohibited them, it would also bar declaratory relief, which it does not. *Biden*, 597 U.S. at 800
4 (Section 1252(f)(1) preserves “jurisdiction to entertain the plaintiffs’ request for declaratory relief.”)
5 (internal quotations omitted); *Rodriguez v. Hayes*, 591 F.3d 1105, 1119 (9th Cir. 2010) (same).²

6 Finally, even if vacatur under the APA were analogous to an injunction, the stay relief
7 Plaintiffs seek here still would not violate Section 1252(f)(1), because stays are not injunctions. “A
8 stay ... temporarily suspend[s] the source of authority to act,” it does not “direct[] the actor’s
9 conduct.” *Nken v. Holder*, 556 U.S. 418, 428–29 (2009).

10 Therefore, under settled law, Section 1252(f)(1) does not prohibit this Court from vacating
11 agency action, and certainly does not render the Court helpless to maintain the status quo by
12 postponing agency action long enough to fully consider the merits.³

13 **B. Section 705 Authorizes the Relief Plaintiffs Seek.**

14 Defendants next attempt to weave together dictionary definitions with inapposite cases to
15 contend that Section 705 “does not authorize relief here because the challenged actions have already
16 taken effect.” Opp. 9–10. That is wrong. Under the orders, Plaintiffs’ employment authorization
17 documents do not expire until April 3, and they lose legal status on April 8. In any event, “[c]ourts –
18 including the Supreme Court – routinely stay already-effective agency action under Section 705.”
19 *Texas*, 646 F. Supp. 3d at 770 (collecting cases); *Centro Legal de la Raza v. EOIR*, 524 F. Supp. 3d
20 919, 980 (N.D. Cal. 2021) (ordering “the effectiveness” of rule stayed after effective date passed).
21 Relief “under Section 705 (even after the effective date) restores the [] status quo *ex ante*,” *i.e.*, the
22 conditions that existed before the challenged agency action. *Texas*, 646 F. Supp. 3d at 771.

23 Defendants’ cases are not to the contrary. *Ne. Ohio Coal. for Homeless & Serv. Emps. Int’l*

24 _____
25 ² Defendants, on page 9 of their brief, also cite a footnote in *Sampson v. Murray*, 415 U.S. 61, 68
26 n.15 (1974), referencing legislative history suggesting Section 705 codified the remedies described
27 in a pre-APA case, *Scripps-Howard Radio v. FCC*, 316 U.S. 4 (1942), but *Scripps-Howard* held
28 there was no “general legislative policy regarding the power to stay administrative orders pending
review” discernible from the statutes governing judicial review of agency actions even at that time.
Id. at 16.

³ Many Venezuelan TPS holders could seek relief even under Defendants’ expansive reading of
Section 1252(f) because proceedings have been initiated against them.

1 *Union, Loc. 1199 v. Blackwell*, 467 F.3d 999, 1006 (6th Cir. 2006), does not address Section 705 at
2 all; it concerned the immediate appealability of a “mandatory injunction” that went “far beyond
3 preserving the status quo.” Likewise, *OPM v. Am. Fed’n of Gov’t Emps. AFL-CIO*, 73 U.S. 1301,
4 1303–05 (1985) does not address Section 705; it held an *appellate court* lacked authority to stay a
5 regulation following *denial* of a TRO brought “eight months after Congress had finally fixed” the
6 effective date, and where the denial’s consequences were not “grave.” *Florida v. Mayorkas*, 2023
7 WL 3567851 (N.D. Fla. May 16, 2023) involved a policy actually “in effect,” *id.* at *4. Even there,
8 the district court did “not definitively decide” whether Section 705 applied because it granted an
9 injunction. *Id.* at n.7. Finally, *Ctr. for Biological Diversity v. Regan*, 597 F. Supp. 3d 173 (D.D.C.
10 2022) and *California v. U.S. Bureau of Land Mgmt.*, 277 F. Supp. 3d 1106 (N.D. Cal. 2017)
11 concerned *agencies’* authority to postpone rules after an effective date, not judicial authority. The
12 difference matters because an agency’s postponement of an already-effective rule is “tantamount to
13 amending or revoking a rule,” which requires APA compliance—unlike court orders under Section
14 705. *Texas*, 646 F. Supp. at 771 (quotations and citations omitted).

15 As a “reviewing court,” this Court can exercise “all necessary and appropriate process to
16 postpone the effective date ... or to preserve status or rights pending conclusion” of judicial review.
17 5 U.S.C. § 705. Nothing about the timing of this Motion deprives the Court of that authority.

18 **C. Section 1254a(b)(5)(A) Does Not Bar Plaintiffs’ Claims.**

19 Defendants next rely on Section 1254a(b)(5)(A) to dispute jurisdiction, but lack the “clear
20 and convincing evidence” required to prove that Congress intended to bar Plaintiffs’ claims. *Ramos*
21 *v. Nielsen*, 321 F. Supp. 3d 1083, 1102 (N.D. Cal. 2018) (citing *Abbott Labs v. Gardner*, 387 U.S.
22 136, 141 (1967)). The statute bars review only of “any determination with respect to the designation,
23 or termination or extension” of TPS. That language does not encompass Plaintiffs’ claims for two
24 basic reasons. First, “it is evident from the statutory context that this provision refers to the
25 designation, termination, or extension of a country for TPS,” not every other kind of agency decision
26 related to TPS. *Ramos*, 321 F. Supp. at 1102. Second, not every agency conclusion is a
27 “determination ... under [subsection(b)].” Mot. 17. “Determination” in jurisdiction-stripping statutes
28 refers narrowly to certain conclusions in support of underlying decisions, such as whether a country

1 is safe for return. *Id.* at 17–18. On that basis, the Supreme Court and Ninth Circuit have found
2 jurisdiction in several cases involving statutes using “determination.” *Id.* (collecting cases).

3 These limits make clear that Plaintiffs’ claims are cognizable. First, they challenge a vacatur,
4 which is not a “designation, or termination or extension” at all. Second, they challenge the agency’s
5 statutory authority to issue a vacatur and its flawed reasoning in support of it (which concerned TPS
6 registration rules). Neither of those challenges attack covered “determination[s].” *Id.*

7 Defendants suggest the appearance of “any” before “determination” and the phrase “with
8 respect to” grant them a get-out-of-court-free card. Not so. “Any” cannot expand the meaning of
9 “determination.” “[T]he statute’s reference to ‘any determination’ does not subsume ‘any’ general
10 policies or practices. Rather, the word ‘any’ must be understood in its grammatical context.” *Ramos*,
11 321 F. Supp. 3d at 1104 (collecting cases). Indeed, courts have consistently read “any” and other
12 open-ended terms in jurisdiction-stripping statutes narrowly. *See, e.g., Demore v. Kim*, 538 U.S. 510,
13 516 (2003) (provision stating “No court may set aside *any* action or decision ... regarding the
14 detention ... of any alien” not broad enough to cover claim that agency lacked statutory and
15 constitutional authority to detain) (citation omitted). For that reason, “with respect to” also cannot
16 broaden the meaning of “determination”; otherwise, this and other jurisdiction-stripping statutes
17 would be virtually limitless. *Jennings v. Rodriguez*, 583 U.S. 281, 293–94 (2018) (construing
18 reference to claims “arising from” detention narrowly, because “when confronted with capacious
19 phrases like ‘arising from’ we have eschewed ‘uncritical literalism’”) (plurality) (citation omitted);
20 *see also id.* (collecting cases involving “affected,” “related to,” and “in connection with”).

21 Defendants cite the Supreme Court’s reliance on the “broadening effect” of the words “any”
22 and “regarding” in *Patel v. Garland*, 596 U.S. 328, 339 (2022), but the statute there did not contain
23 the word “determination,” and the Court relied on other context clues not present here. *Id.* (citing
24 amendment history of 8 U.S.C. § 1252(a)(2)(D)). Unlike in the TPS statute, when Congress sought
25 to write “categorical review preclusion language” into law, Opp. 13, it did so. *See, e.g., Gebhardt v.*
26 *Nielsen*, 879 F.3d 980, 984–85 (9th Cir. 2018) (statute specifying decisions were in Secretary’s “sole
27 and unreviewable discretion” barred review of all but constitutional claims).

28 Finally, Defendants assert that exercising jurisdiction would offend the Secretary’s broad

1 grant of discretion over TPS, relying on the now-vacated Ninth Circuit panel’s jurisdictional
2 analysis. However, that aspect of the decision was particularly weak, as the dissent explained. *Ramos*
3 *v. Wolf*, 975 F.3d 872, 919–24 (9th Cir. 2020) (Christen, J., dissenting), *opinion vacated upon reh’g*
4 *en banc*, 59 F.4th 1010 (9th Cir. 2023). In fact, the TPS statute provides the Secretary broad
5 discretion to designate a country for TPS once the designation is made, however, the statute requires
6 termination where the country conditions “no longer continue[.],” and conversely provides TPS “is
7 extended” if unsafe conditions persist. But even under the *Ramos* majority’s reasoning, Plaintiffs’
8 APA claims would be cognizable because the vacatur-authority claim turns on the interpretation of
9 the TPS statute, which is “reviewable under *McNary*.” *Id.* at 895. Similarly, the claim that the
10 vacatur decision was arbitrary turns on the Secretary’s failure to understand the statute’s registration
11 process or consider obvious fixes short of vacatur; not her discretion to “consider and weigh various
12 conditions in a foreign country,” which the *Ramos* majority held to be “unreviewable.” *Id.* at 891.

13 **II. PLAINTIFFS ARE LIKELY TO PREVAIL ON THEIR APA CLAIMS.**

14 **A. DHS Lacks Authority to Vacate TPS Extensions.**

15 Defendants claim “[t]he power to reconsider is inherent in the power to decide,” Opp. 14 &
16 n.5, but ignore that the en banc Ninth Circuit held the opposite. *Gorbach v. Reno*, 219 F.3d 1087,
17 1095 (9th Cir. 2000) (en banc) (“There is no general principle that what [an agency] can do, [it] can
18 undo”). In particular, the “use of a fixed term” for a benefit (like the fixed length of a TPS extension)
19 “is ... inconsistent with ... an implied power to revoke ... at any time.” *China Unicom*, 124 F. 4th at
20 1148. Even Defendants’ out-of-circuit authority recognizes that any implied reconsideration
21 authority must yield to statutory limitations. *See Alberston v. FCC*, 182 F.2d 397, 399 (D.C. Cir.
22 1951); *Macktal v. Chao*, 286 F.3d 822, 825–26 (5th Cir. 2002); *Gun South v. Brady*, 877 F.2d 858,
23 862–64 (11th Cir. 1989). Their other cases concern uncontested assertions of reconsideration
24 authority or otherwise involve extraordinary facts not present here, and do not address the statutory
25 schemes at issue. *See Mazaleski v. Treusdell*, 562 F.2d 701, 720 (D.C. Cir. 1977) (considering
26 whether plaintiff’s rejection of agency offer to reconsider precluded claims); *Last Best Beef, LLC v.*
27 *Dudas*, 506 F.3d 333, 336, 340 (4th Cir. 2007) (patent office unknowingly approved trademark on
28 same day legislation prohibiting trademark was signed into law). *Kelch* concerns state law. *Kelch v.*

1 *Nevada Dep't of Prisons*, 10 F.3d. 684, 686 (9th Cir. 1993).

2 Defendants protest that, under “Plaintiffs’ logic,” the Secretary could never vacate a TPS
3 extension, even if she discovered a genuine error or national security threat. Opp. 15. “Plaintiffs’
4 logic” is the law: “Regardless of how serious the problem an administrative agency seeks to address,
5 ... it may not exercise its authority in a manner that is inconsistent with the administrative structure
6 that Congress enacted into law.” *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 125
7 (2000) (quotations omitted). There is nothing remarkable about denying an agency “implicit”
8 authority to revoke the immigration status of potentially millions of people. The Secretary cannot
9 revoke en masse green cards, H-1B visas, or student visas; such authority resides with Congress.
10 Indeed, Congress established fixed time periods for TPS precisely to eliminate confusion under prior
11 humanitarian programs about “how long [beneficiaries] will be able to stay.” 101 Cong. Rec. 25811,
12 25837 (Oct. 25, 1989) (Statement of Rep. Richardson) (debate on precursor to TPS statute).

13 Defendants also cannot support the vacatur order based on serious error or national security
14 concerns. Secretary Noem already gave her “[r]easons for the [v]acatur.” 90 Fed. Reg. 8805-01 at
15 8807. She identified no error in the prior determination, no urgent national security or foreign policy
16 matter, and no “threats to the safety and security of the United States.” Opp. 13–15. Rather, her
17 concerns were ministerial, namely a potential “lack of clarity” due to “multiple notices, overlapping
18 populations, overlapping dates, and sometimes multiple actions happening in a single document.” 90
19 Fed. Reg. 8807; Opp. 6 (describing reasons for vacatur). Defendants complain that Plaintiffs “sever”
20 the vacatur from the termination. Opp. 14. But the vacatur cannot be justified by reasons in a later
21 termination notice. *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 21 (2020)
22 (“rescission [may] not [be] upheld on the basis of impermissible ‘post hoc rationalization’”) (citation
23 omitted).

24 Finally, while Defendants emphasize the Secretary’s “border and national security
25 responsibilities,” the breadth of the “national interest” standard, and “foreign policy” implications,
26 they do not (and could not) argue these factors authorize vacatur if the TPS statute does not. Opp.
27 13–17. Defendants concede vacatur authority is “foreclosed” if Congress has “require[ed] other
28 procedures.” *Id.* at 14 n.14. Congress has. Mot. 5–8. Terminations take effect either: (a) 60 days after

1 publication or (b) “*if later*,” the “expiration of the most recent previous extension”—here, October 2,
2 2026. 8 U.S.C. § 1254a(b)(3)(B) (emphasis added); 90 Fed. Reg. 5961-01 (Jan. 2025 Extension).
3 Secretary Noem’s attempt to erase Venezuela’s “most recent previous extension” and then terminate
4 TPS eighteen months before the “expiration of” that extension violates the statute.⁴

5 **B. The Vacatur Decision Was Arbitrary.**

6 Even if DHS had vacatur authority, the reasons given for this vacatur still violate the APA.
7 Defendants ignore Plaintiffs’ argument that the vacatur rests on legal errors. Mot. 8–9. They repeat
8 Secretary Noem’s concern about “negat[ing] the 2021 Venezuela TPS designation” by “subsuming it
9 within the 2023 Venezuela designation,” Opp. 16–17, but ignore that *all* new designations
10 necessarily subsume earlier ones. Defendants also repeat Secretary Noem’s objection to
11 consolidating registration processes, *id.*, but the statute’s text permits registration “to the extent and
12 in a manner which the [Secretary] establishes.” 8 U.S.C. § 1254a(c)(1)(A)(iv).

13 Instead, they defend the vacatur on two grounds. First, they say Secretary Noem “reasonably
14 explained” that the 2025 extension⁵ lacked “a reasoned explanation or express consideration of the
15 operational or legal impacts.” Opp. 16. The vacatur notice faults the extension for failing to
16 “acknowledge the novelty of its approach or explain how it is consistent with the TPS statute,” and
17 providing an “inadequately developed” “explanation for operational impacts” on registration. 90
18 Fed. Reg. 8805-01 at 8807. But those explanations *prove* Secretary Noem’s legal errors. Labeling a
19 decision as “novel” and potentially unlawful when it is plainly neither one, and complaining about a
20 failure to explain non-existent flaws, is *not* reasoned decision-making. *Mass. v. EPA*, 549 U.S. 497,
21 534–35 (2007) (decision based on misinterpretation of agency’s own authority violated APA).

22 Second, Defendants claim that simple revisions to the registration process would be
23 insufficient because vacatur provided “an opportunity for informed determinations regarding the
24 TPS designations.” Opp. 17. This too is not a reasoned explanation. It is a bald assertion that the
25 Secretary should be allowed to vacate a decision whenever she wants. The statute does not permit

26 ⁴ Because the vacatur is “incompatible with the expressed or implied will of Congress,” Defendants’
27 reliance on *Youngstown* is misplaced. Opp. 15 (citing *Youngstown Sheet and Tube Co. v. Sawyer*,
343 U.S. 579, 635 (1952) (Jackson, J., concurring)).

28 ⁵ Plaintiffs’ counsel confirmed with Defendants by email that the Opposition’s reference to the
“2023 Designation notice,” Opp. 16, was instead meant to refer to the 2025 Extension.

1 that result. And even where an agency does have implied reconsideration authority, it may not
2 exercise that authority “as a guise for changing previous decisions because the wisdom of those
3 decisions appears doubtful in the light of changing policies.” *Am. Trucking Ass’n v. Frisco Transp.*
4 *Co.*, 358 U.S. 133, 146 (1958). Finally, Defendants suggest the Motion “diverges” from the
5 Complaint, but Plaintiffs pled every APA claim raised here. Compl. ¶¶ 149–149(a)– (f).

6 **III. PLAINTIFFS ARE LIKELY TO PREVAIL ON THEIR DISCRIMINATION CLAIM.**

7 Defendants never address the most damning direct evidence of race discrimination: Secretary
8 Noem’s repeated invocation of false, racist tropes to justify these decisions. When announcing these
9 decisions, she stated “the people of this country ... want these dirt bags out.” Ex. 14. Similarly,
10 during her confirmation hearing, she called “this extension [of TPS] of over 600,000 Venezuelans ...
11 alarming” because of “gangs”—confirming that she equates Venezuelan TPS holders with criminals.
12 Ex. 12. Such fabricated assertions “fit comfortably into [a] historical pattern” of invoking false fears
13 of criminality to stoke racist sentiment against disfavored immigrant populations. Dkt. 22 ¶¶ 20, 27.

14 Even if the deferential standard of review under *Trump v. Hawaii*, 585 U.S. 667 (2018)
15 applied, the Court could consider these contemporaneous statements of animus and related “extrinsic
16 evidence” to prove Defendants’ justifications are not “bona fide,” *id.* 705–06; *Ramos*, 336 F. Supp.
17 3d at 1108. The evidence of animus connected to these decisions is overwhelming. *See App’x A*
18 *hereto* (summarizing evidence in the record). Even the Federal Register notice is infused with racial
19 animus. It claims TPS allowed “members of the Venezuelan gang known as Tren de Aragua” to
20 “settle in the interior” of the U.S., and alleges crimes by TdA. 90 Fed. Reg. 9040-01 at 9042. This is
21 false for several reasons: TPS does not allow people to enter the U.S.; TdA “appears to have no
22 substantial U.S. presence and looks unlikely to establish one,” Dkt. 26 ¶¶ 16–22; Compl. ¶¶ 95–97;
23 and people who present a national security threat are ineligible for TPS.⁶ These blatantly false
24 statements evoking racist tropes cannot be brushed aside as remote in time, “taken out of context,” or
25 as about Venezuela “the country itself.” *Compare Opp.* 21 *with Exs.* 6, 12, 14, 15, *and App’x A.* Nor

26 _____
27 ⁶ 8 U.S.C. § 1254a(c)(2); Dkt. 27 ¶ 15. TPS applicants are subject to searching inquiries about
28 potential criminal history anywhere in the world. USCIS, Form I-821 “Application for Temporary
Protected Status” at 7–10 (Apr. 1, 2024 ed.). Furthermore, the Secretary may withdraw TPS from
any person if she later determines the person was not eligible. 8 U.S.C. § 1254a(c)(3)(A).

1 does it matter whether the statements reflect animus based on national origin rather than race; both
2 are equally unlawful. Mot. 11 n.3.⁷

3 In any event, this Court and others held that the *Arlington Heights* standard governs TPS
4 decisions.⁸ TPS concerns people “already in the United States” with “greater constitutional
5 protections”; *Ramos*, 321 F. Supp. 3d at 1129; and the decisions challenged here were not “intended
6 to induce the cooperation or action of a foreign government,” *id.*, and not issued under a statute that
7 “exudes deference to the President in every clause.” *Id.* at 1130. And while the Secretary asserted the
8 “national interest” justified the termination (though not the vacatur), her explanations reveal the
9 underlying rationale relates to (unfounded) assumptions about crime and economic harm, not
10 national security as that doctrine is understood. *See Tuan Thai v. Ashcroft*, 366 F.3d 790, 796 (9th
11 Cir. 2004) (“We do not agree that the danger of criminal conduct by an alien is automatically a
12 matter of national security”).⁹

13 Defendants suggest the record here is comparable to that in *Ramos*, but, sadly, there is now
14 far more direct proof that “administration officials involved in the TPS decision-making process
15 were themselves motivated by” racial animus. *Ramos*, 975 F.3d at 897. In *Ramos*, the Secretaries
16 made no racist statements, whereas Secretary Noem has used them to explain her decisions, and has
17 also adopted President Trump’s racist justifications in the notice itself, 90 Fed. Reg. 9042. For that
18 reason, the Court can rule for Plaintiffs without addressing their “cat’s-paw” theory. *Ramos*, 336 F.
19 Supp. 3d at 1098–1101. Defendants also cannot account for Secretary Noem’s extraordinary
20 deviations from the normal practice, including the first-ever vacatur of an extension and the
21 dramatically compressed timetable, Mot. 13–14, both of which can be evidence of “improper
22

23 ⁷ The Notice also cites Executive Order 14150, the “America First Policy Directive,” claiming the
24 presence of Venezuelan TPS holders contravenes that order. As was true before, the “America First”
25 slogan itself evokes racial animus. *Ramos*, 336 F. Supp. 3d at 1104; Compl. ¶ 126 n.82.

26 ⁸ *Ramos*, 975 F.3d at 896 (rejecting government’s contention that *Hawaii* standard of review
27 applies); *Ramos*, 336 F. Supp. 3d at 1105–07; *Centro Presente v. DHS*, 332 F. Supp. 3d 393, 411–12
28 (D. Mass. 2018); *Saget v. Trump*, 345 Supp. 3d 287, 301–02 (E.D.N.Y. 2018); *Saget v. Trump*, 375
F. Supp. 3d 280, 367–68 (E.D.N.Y. 2019); *Casa de Md., Inc. v. Trump*, 355 F. Supp. 3d 307 (D. Md.
2018); *NAACP v. DHS*, 364 F. Supp. 3d 568, 576 (D. Md. 2019).

⁹ Defendants claim in passing that this Court lacks jurisdiction to consider the constitutional claim,
but ignore that Section 1254a never mentions constitutional claims.

1 purpose[.]” *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977).

2 Nor can the termination be substantiated by logic or facts. Aside from the false references to
3 criminality, Secretary Noem asserts that allowing a large number of unauthorized immigrants to
4 settle in the U.S. strains resources of “local communities.” 90 Fed. Reg. 9040-01 at 9042. But, given
5 many Venezuelan TPS holders cannot return to Venezuela or travel to a safe third country,
6 terminating TPS will *increase* the number of unauthorized Venezuelans and prevent them from
7 working lawfully, only worsening any strain on local communities. Dkt. 19 ¶¶ 15–16; Dkt. 27 ¶¶ 18–
8 23, 27. Defendants do not dispute that their actions will cost the U.S. economy at least \$3.5 billion,
9 including nearly \$500 million in lost Social Security taxes. Dkt. 21 ¶ 9. Finally, Secretary Noem
10 cited “pull factors.” However, her only source of support concerns *redesignating* a country for TPS,
11 which expands the pool of TPS recipients. 90 Fed. Reg. 9040-01 at 9043 n.18. She cites no evidence
12 that TPS *extensions* “pull” immigrants here, and it defies logic because they do not make more
13 people eligible. Dkt. 27 ¶ 26 (“No ‘Magnet Effect.’”).

14 Together, this evidence more than suffices to establish a likelihood of success on the claim
15 that race or national origin discrimination was a motivating factor in these TPS decisions.

16 **IV. PLAINTIFFS HAVE ESTABLISHED IRREPARABLE HARM.**

17 Plaintiffs’ record on irreparable harm stands un rebutted. Absent postponement, the
18 challenged decisions will devastate the lives and communities of Plaintiffs and thousands of other
19 Venezuelan TPS holders. Dkts. 17–20, 29–36, 64; Mot. 21–23. TPS is supposed to provide
20 humanitarian protection so long as conditions in a designated country have not improved. Here, the
21 Secretary presumes that “conditions in Venezuela remain ... ‘extraordinary’” 90 Fed. Reg. 9042, yet
22 her actions will strip hundreds of thousands of people of TPS protection absent judicial intervention.

23 TPS holders are experiencing severe and growing anxiety; many will lose their status,
24 employment authorization, driver’s licenses, and right to legally remain here in a matter of weeks.
25 E.R., for instance, is the sole provider for her twelve-year-old daughter, and faces the loss of her
26 work authorization on April 3; she fears that, absent a legal right to remain, she and her daughter
27 could be detained at her June 2025 ICE check-in and deported shortly after. Dkt. 20 ¶¶ 2, 12–13, 17–
28 18. M.H. also fears she will lose TPS in April, and face the possibility of being separated from her

1 three-year-old U.S. citizen son as soon as her ICE check-in in May. Dkt. 32 ¶¶ 2, 6, 17. Mr. Arape
2 renewed TPS immediately upon the January 17 decision and received an automatic extension of his
3 work authorization; he now fears the imminent loss of both his work authorization and his ability to
4 apply for an H-1B visa, which is contingent on him remaining in status. Dkt. 18 ¶¶ 2, 14–16. A.V.
5 suffered panic attacks at the thought of losing TPS and overdosed on medication; Ms. Guerrero and
6 her husband cry about the loss of TPS every day. Dkt. 31 ¶ 18. Ms. Gonzalez Herrera has cancelled
7 plans to pursue graduate education. Dkt. 29 ¶ 15.

8 Apart from the human tragedy unfolding here, the challenged decisions will cause billions in
9 unrecoverable economic losses, including lost Social Security contributions and other economic
10 benefits that everyone living here reaps from the contributions of this community. Dkts. 21, 23–24,
11 27. And deprivations of constitutional and statutory rights alone give rise to irreparable injury.
12 *Compare* Mot. 19–20 *with* Opp. 22 (not disputing violations alone represent irreparable harm).

13 Lacking an iota of competent evidence of harm, Defendants nonetheless urge the Court to
14 close its eyes to these horrors based on an invented exception to irreparable harm. Defendants argue
15 that the massive loss of safety, family, community, healthcare, work, and education resulting from
16 their decisions are “inherent” byproducts of TPS’s “temporary nature.” Opp. 22. They made the
17 same argument in *Ramos*, and this Court rejected it, explaining that “the shortening of [] time in the
18 United States and acceleration of [] removal if relief is not granted may constitute irreparable
19 injury.” *Ramos*, 336 F. Supp. 3d at 1087. Here the difference is at least 18 months, and could be
20 longer if Venezuela remains unsafe. *Doe v. Becerra*, 704 F. Supp. 3d 1006, 1017 (N.D. Cal. 2023),
21 *abrogated on other grounds by Doe v. Garland*, 109 F.4th 1188 (9th Cir. 2024) (explaining that even
22 limited extensions of time at liberty in the U.S. may affect family ties, employment, and educational
23 opportunities).

24 Defendants do not deny that their decisions exacerbate what they call “inherent” harm. Nor
25 do they dispute that their decisions upended reasonable reliance expectations—in a prior duly
26 adopted extension, especially where there is no precedent in TPS’s 35-year history of an extension
27 being vacated and terminated; and in the continuity of TPS so long as the country conditions justify
28 it. Defendants also provide no legal support for their invented exception to irreparable harm. They

1 cite *Stanley v. Illinois*, 405 U.S. 645, 647 (1972), but this case did not consider the *Winter* factors or
2 endorse such an exception. And they badly misread *Washington v. Trump*, 847 F.3d 1151, 1169 (9th
3 Cir. 2017). It ruled that permitting a decision to take effect even “temporarily” *can* cause
4 “substantial injuries and even irreparable harms” when, as here, it threatens to “separate[] families.”
5 *Id.* at 1169. That case also reaffirmed the public “interest ... in avoiding separation of families”
6 *Id.* It concluded that the “powerful interest in national security and in the ability of an elected
7 president to enact policies” did *not* outweigh such harms. *Id.* Ultimately, the Ninth Circuit *denied*
8 two attempts by Defendants to set aside a district court order entered to prevent harms like those
9 here. *Id.* at 1156, 1158. The irreparable harm factor thus supports granting relief here.

10 **V. THE EQUITIES AND PUBLIC INTEREST FAVOR POSTPONEMENT.**

11 Defendants’ equities arguments rest on nothing more than unsubstantiated assertions from
12 the challenged termination itself. Opp. 24. For example, Defendants invoke safety concerns over the
13 Tren de Aragua gang, but offer no evidence that TdA members obtained TPS, and ignore the record
14 evidence thoroughly refuting that possibility. *See supra* p.9. Defendants’ other arguments about the
15 public interest in enforcing immigration laws similarly fall short. Opp. 24. As one of Defendants’
16 own authorities illustrates, those interests would be served by postponing an unlawful decision
17 pending judicial review to avoid massive harm. *See Washington*, 847 F.3d at 1169.

18 Defendants’ nonexistent evidentiary showing on the equities underscores that the balance of
19 hardships tips sharply in Plaintiffs’ favor. The parties will face vastly different consequences from
20 an erroneous decision. *See COR Clearing, LLC v. Ashira Consulting, LLC*, 2016 WL 7638177, at *5
21 (C.D. Cal. Jan. 13, 2016) (weighing the equities “assuming the Court’s ruling granting the injunction
22 is erroneous”). At most, an erroneous decision in Plaintiffs’ favor would allow Venezuelan TPS
23 holders to temporarily retain TPS—an outcome that, until a short while ago, was what the
24 government itself had ordered. In contrast, an erroneous decision in Defendants’ favor will cause
25 immediate and irreversible humanitarian harms, *e.g.*, Dkt. 18 ¶¶ 13, 18, 20, 22; Dkt. 20 ¶¶ 19, 22;
26 Dkt. 25 ¶¶ 19, 21; Dkt. 32 ¶ 22; Dkt. 33 ¶¶ 11, 17, 19; Dkt. 33 ¶¶ 15, 17, broad-based economic
27 disruption, *e.g.*, Dkt. 21 ¶ 9; Dkt. 23 ¶¶ 4–8; Dkt. 24 ¶¶ 6–8; Dkt. 27 ¶¶ 15, 20–22, and compromise
28 public health and safety, *e.g.*, Dkt. 19 ¶ 10; Dkt. 27 ¶¶ 15–16. The harms would impact not only TPS

holders, but also their American family members, friends, and neighbors.

VI. THE REQUESTED RELIEF IS NOT OVERBROAD.

The relief Plaintiffs seek is not overbroad. The Ninth Circuit’s default rule in APA cases is that orders setting aside administrative agency action apply against the rule itself; only in that sense are they “universal.” Opp. 25. “When a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated—not that their application to the individual petitioners is proscribed.” *East Bay*, 993 F.3d at 681 (cleaned up). Other circuits have long held the same. *Harmon v. Thornburgh*, 878 F.2d 484, 495 n.21 (D.C. Cir. 1989) (same); *Career Colls. & Schs. of Tex. v. Dep’t of Educ.*, 98 F.4th 220, 255 (5th Cir. 2024) (“Nothing in the text of Section 705, nor of Section 706, suggests that either preliminary or ultimate relief under the APA needs to be limited to [the associational plaintiff] or its members”).

While there may be exceptions to that default rule, the factors *East Bay* identified for purposes of determining the appropriate scope of relief in APA immigration cases strongly favor postponing the agency action universally in this case. First, it is “necessary to give prevailing parties the relief to which they are entitled.” *E. Bay*, 993 F.3d at 680. NTPSA has over 84,000 Venezuelan TPS holder members living in all 50 states and the District of Columbia. Dkt. 34 ¶13. “Requiring ... officials ... to distinguish between [TPS] recipients who are members of the [Alliance] and those who are not is impractical.” *Az. Dream Act Coal. v. Brewer*, 81 F. Supp. 3d 795, 810 (D. Ariz. 2015), *aff’d*, 855 F.3d 957 (9th Cir. 2017) (relief “should apply to all DACA recipients” where associational plaintiff sought relief for DACA-holder members); *see also Easyriders Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486, 1502 (9th Cir. 1996). Indeed, even under the most restrictive rule for non-APA cases limiting relief narrowly to the parties before the Court, adequate equitable relief would require a remedy for all Venezuelan NTPSA members who hold TPS, rendering circuit-wide relief inadequate. Dkt. 34 ¶ 33.

Second, the Ninth Circuit has generally recognized the “need for uniformity in immigration policy,” because the INA itself “was designed to implement a uniform federal policy.” *East Bay*, 993 F.3d at 681 (quotation omitted). That rationale has particular force here, where the statute contemplates only one TPS status per country at a time. Adopting different rules for TPS holders

1 from the same country would create confusion and needlessly complicate agency action in response
2 to the “United States’s changing immigration requirements.” *Id.* at 681. For these reasons, the Ninth
3 Circuit has “consistently recognized the authority of district courts to grant universal relief” in
4 immigration cases. *Id.* at 681; *see also Texas*, 40 F.4th at 219–20 (Fifth Circuit’s similar rule).

5 Defendants’ argument against universal relief rests entirely on non-APA cases. Opp. 25.
6 Those cases are about injunctions rather than vacatur or postponement under the APA, and the only
7 immigration case among them states that the federal government must speak with “one voice” in the
8 immigration realm, which supports uniformity here. *Id.* (quoting *Arizona v. United States*, 567 U.S.
9 387, 409 (2012)). Defendants also cite some concurrences expressing concerns about universal
10 relief, Opp. 25, but other judges (including the Chief Justice) have criticized the suggestion that APA
11 relief would not be universal. *See, e.g., United States v. Texas*, 599 U.S. 670 (2023), Tr. at 35:12–25,
12 https://www.supremecourt.gov/oral_arguments/argument_transcripts/2022/22-58_4fc4.pdf (C.J.
13 Roberts) (characterizing government’s view that vacatur does not afford universal relief as “fairly
14 radical” because “that’s what you do in an APA case”). Whichever view eventually prevails, the
15 concurrences Defendants cite are not the law now. Even on the shadow docket, when the Supreme
16 Court has had ample opportunity to narrow lower court orders that universally vacate—or even
17 enjoin—agency action in both immigration cases and others, it has consistently refused to do so.¹⁰

18 CONCLUSION

19 The Court should postpone the effective date of the challenged decisions until it can finally
20 resolve the merits.

21
22
23 ¹⁰ *See Texas*, 599 U.S. 670, *supra* (denying request for stay of district court order vacating DHS
24 Secretary’s enforcement priorities guidance, which applied universally); *Perez v. United States*, 2024
25 WL 4772734 (U.S. Nov. 12, 2024) (refusing to stay district court order halting the federal
26 government’s Keeping Families Together program for certain noncitizens, which applied
27 universally); *Biden v. Missouri*, 145 S. Ct. 109 (2024) (denying request to vacate universal
28 injunction against Biden administration’s student loan forgiveness program); *Alabama Ass’n of
Realtors v. Dep’t of Health & Human Servs.*, 594 U.S. 758, 759 (2021) (lifting stay on district court
order universally vacating the COVID eviction moratorium); *see also Washington v. Trump*, ---
F.4th ---, 2025 WL 553485 (9th Cir. Feb. 19, 2025) (affirming universal injunction against birthright
citizenship order, and rejecting request to narrow injunction’s scope); *CASA, Inc. v. Trump*, --- F.4th
---, 2025 WL 654902, at *1–3 (4th Cir. Feb. 28, 2025) (same, based on need for equity, uniformity,
and complete relief for associational plaintiff).

1 Date: March 7, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2025, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record.

ACLU FOUNDATION
OF NORTHERN CALIFORNIA

/s/ Emilou MacLean

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

NATIONAL TPS ALLIANCE, *et. al.*,
Plaintiff,
v.
KRISTI NOEM, in her official capacity as
Secretary of Homeland Security, *et. al.*,
Defendants.

Case No. 3:25-cv-1766-EMC

**DEFENDANTS' RESPONSE IN OPPOSITION
TO PLAINTIFFS' MOTION TO POSTPONE
EFFECTIVE DATE OF AGENCY ACTION**

Judge: Hon. Edward M. Chen
Date: March 24, 2025
Time: 9:00 a.m.
Place: Courtroom 5, 17th Floor, San
Francisco U.S. Courthouse

Defendants' Opp. To Plaintiffs' Mot. to Postpone
3:25-cv-1766-EMC

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INTRODUCTION

Defendants Kristi Noem, in her official capacity as Secretary of Homeland Security; the U.S. Department of Homeland Security (DHS); and the United States of America, respectfully submit this response in opposition to Plaintiffs’ Motion to Postpone Effective Date of Agency Action.¹ (PI Mot.), ECF 16. In 1990, Congress created the Temporary Protected Status (TPS) program to provide, on a discretionary basis, temporary status to aliens who cannot safely return in the short-term to their home nation because of a natural disaster, armed conflict, or other “extraordinary and temporary conditions in the foreign state.” 8 U.S.C. § 1254a(b). The Secretary of Homeland Security may designate a country for TPS only if the Secretary determines that certain statutory criteria justifying the designation are met. When a country is designated, eligible aliens from that country who are present in the United States on the effective date of the designation and register with the federal government are temporarily protected from removal and receive authorization to work in the United States. Consistent with the temporary nature of TPS, Congress dictated that the Secretary must regularly review a country’s TPS designation and must terminate that designation if she determines that the conditions giving rise to the designation are no longer met. Congress further provided that “determinations” concerning TPS “with respect to the designation, or termination or extension of a designation, of a foreign state under this subsection” are not subject to “judicial review.” 8 U.S.C. § 1254a(b)(5)(A).

Exercising her clear and unreviewable statutory authority, Secretary Noem terminated the TPS designation for Venezuela. *Termination of the October 3, 2023 Designation of Venezuela for Temporary Protected Status*, 90 Fed. Reg. 9040 (Feb. 5, 2025) (hereinafter “2025 Termination”). Venezuela was first designated in 2021 under 8 U.S.C. § 1254a(b)(1)(C) based on former Secretary Mayorkas’s determination that there exist in Venezuela “extraordinary and temporary conditions” that prevent Venezuelan nationals from safely returning and that it is not “contrary to the national interest of the United States” to permit the aliens to remain temporarily in the United States. *Id.* at 9041. In 2023, former Secretary Mayorkas newly

¹ Plaintiffs style their Motion as one arising under 5 U.S.C. § 705 of the Administrative Procedure Act (“APA”), calling it a Motion to Postpone Effective Date of Agency Action. Yet Plaintiffs cite to the preliminary injunction standard throughout their Motion and effectively ask this Court for prohibited injunctive relief. Defendants will refer to Plaintiffs’ Motion as a Preliminary Injunction Motion (PI Mot.).

1 designated Venezuela, creating a parallel designation with the original 2021 designation. *Extension and*
2 *Redesignation of Venezuela for Temporary Protected Status*, 88 Fed. Reg. 68,130 (Oct. 3, 2023)
3 (hereinafter “2023 Designation”). Consistent with her obligation to periodically review whether TPS
4 designations remain appropriate, Secretary Noem, after consulting with other government agencies,
5 determined that the conditions for the 2023 Designation of Venezuela for TPS no longer continue to be
6 met. The Secretary supplied the basis and justification for her determination in the Federal Register notice,
7 where she explained that it is contrary to the U.S. national interest to permit the Venezuelan nationals to
8 remain temporarily in the United States. *See 2025 Termination*, 90 Fed. Reg. at 9042-9044.

9 Notwithstanding the Secretary’s clear authority and Congress’s decision to commit her
10 determination to her discretion alone, Plaintiffs, the National TPS Alliance, “a member-led organization,”
11 and several TPS beneficiaries, bring this suit challenging the termination and asserting claims under the
12 APA and the Equal Protection Clause. Plaintiffs ask this court to postpone the effective date of Secretary
13 Noem’s vacatur of a recently-published decision extending the 2023 designation for Venezuela, *Vacatur*
14 *of 2025 Temporary Protected Status Decision for Venezuela*, 90 Fed. Reg. 21, 8805 (Feb. 3, 2025)
15 (hereinafter “2025 Vacatur”), and the 2025 Termination of TPS for Venezuela. *2025 Termination*, 90 Fed.
16 Reg. at 9040. The Court should reject those extraordinary requests.

17 To start, the Court lacks jurisdiction to issue the requested relief. Although Plaintiffs style their
18 request for relief as a motion to postpone the effective date of the Secretary’s determination under 5 U.S.C.
19 § 705, what they actually seek is an injunction enjoining the exercise of her authority. But 8 U.S.C.
20 § 1252(f)—a provision Plaintiffs tellingly ignore—explicitly bars such relief. Section 1252(f)(1) provides:
21 “Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action,
22 no court (other than the Supreme Court) shall have jurisdiction or authority to *enjoin or restrain* the
23 operation of the provisions of part IV of this subchapter ... other than with respect to the application of
24 such provisions to an individual alien against whom proceedings ... have been initiated.” 8 U.S.C.
25 § 1252(f)(1) (emphasis added). Section 1254a is on such a covered provision, and a stay “enjoin[ing] or
26 restrain[ing]” the Secretary’s determination from having any legal effect is thus precisely the sort of
27 coercive order § 1252(f) prohibits.

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1 Additionally, the TPS statute broadly prohibits judicial review of “any determination of the
2 Secretary with respect to” designations, terminations, or extensions. 8 U.S.C. § 1254a(b)(5)(A). Each of
3 the Secretary’s decisions is precisely such a “determination” concerning “termination” of a designation
4 under § 1254a. *Id.* Plaintiffs’ claims challenging the basis for Secretary Noem’s Vacatur and Termination
5 decisions and seeking to set those decisions aside, fit squarely within the statute’s bar on judicial review.

6 Plaintiffs’ claims lack merit too. Plaintiffs’ APA claims fail because Congress granted the
7 Secretary broad discretion and authority to review TPS decisions pertaining to the continuing mandate
8 that she ensure the continued designation of a country does not adversely affect the national interest.
9 Plaintiffs’ equal protection claim is equally unavailing. Plaintiffs fail to identify any evidence indicating
10 that the Secretary was motivated by discriminatory animus. To the contrary, the evidence demonstrates
11 that Secretary Noem’s Vacatur and Termination decisions are immigration policies rationally related to
12 government objectives of national security and are not motivated by racially discriminatory intent. And
13 that is true, regardless of whether the Court applies the deferential standard recognized in *Trump v.*
14 *Hawaii*, 585 U.S. 667 (2018), as applicable to such claims in the immigration context, or the balancing
15 sometimes applied in other contexts set forth in *Village of Arlington Heights v. Metro. Hous. Dev.*
16 *Corp.*, 429 U.S. 252 (1977).

17 Finally, in seeking a nationwide injunction, the scope of Plaintiffs’ requested relief is vastly
18 overbroad. The relief sought goes much further than redressing the injuries to the Plaintiffs and contravenes
19 equitable principles that require relief to be no more burdensome to the defendant than is necessary to
20 provide plaintiff relief. *California v. Yamasaki*, 442 U.S. 682, 702 (1979). Should the Court grant Plaintiffs’
21 requested injunction-like “stay”, it should be limited to the individual Plaintiffs.

22 **BACKGROUND**

23 **A. Statutory Background**

24 The Immigration Act of 1990 established a program for providing temporary shelter in the United
25 States on a discretionary basis for aliens from designated countries experiencing ongoing armed conflict,
26 environmental disaster, or “extraordinary and temporary conditions” that temporarily prevent the aliens’
27 safe return or, in the case of environmental disasters, temporarily render the country unable to handle
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adequately the return of its nationals. Pub. L. No. 101-649, 104 Stat. 4978. The statute authorizes the Secretary of Homeland Security,² “after consultation with appropriate agencies of the Government,” to designate countries for “Temporary [P]rotected [S]tatus,” if she finds:

(A) ... that there is an ongoing armed conflict within the state and, due to such conflict, requiring the return of aliens who are nationals of that state to that state (or to the part of the state) would pose a serious threat to their personal safety;

(B) ... that—

(i) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected,

(ii) the foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state, and

(iii) the foreign state officially has requested designation under this subparagraph; or

(C) ... there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless the [Secretary] finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.

8 U.S.C. § 1254a(b).

When the Secretary designates a country for TPS, eligible aliens who are granted TPS may not be removed from the United States and are authorized to work for the duration of the country’s TPS designation, so long as they remain in valid temporary protected status. 8 U.S.C. § 1254a(a), (c); *see Sanchez v. Mayorkas*, 593 U.S. 409, 412 (2021). Initial designations may not exceed eighteen months. 8 U.S.C. § 1254a(b)(2). The Secretary must consult with appropriate agencies and review each designation before it ends to determine whether the conditions for the country’s designation continue to be met. *Id.* § 1254a(b)(3)(A). If the Secretary finds that the foreign state “no longer continues to meet the conditions for designation,” she “shall terminate the designation” by publishing notice in the Federal

² The statute originally vested the Attorney General with the power to make TPS designation, extension and termination decisions. Congress transferred these powers to the Secretary of Homeland Security. *See* 8 U.S.C. § 1103; 6 U.S.C. § 557.

1 Register of the determination and the basis for the termination. *Id.* § 1254a(b)(3)(B). If the Secretary
2 “does not determine” that the foreign state “no longer meets the conditions for designation,” then “the
3 period of designation of the foreign state is extended for an additional period of 6 months (or, in the
4 discretion of the [Secretary], a period of 12 or 18 months).” *Id.* § 1254a(b)(3)(C).

5 Finally, the statute makes the Secretary’s TPS determinations unreviewable. Section
6 1254a(b)(5)(A) states: “There is no judicial review of any determination of the [Secretary] with respect
7 to the designation, or termination or extension of a designation, of a foreign state under this subsection.”

8 **B. Factual Background**

9 On March 9, 2021, then-Secretary of Homeland Security Alejandro Mayorkas designated
10 Venezuela for TPS based on extraordinary and temporary conditions that prevented nationals of
11 Venezuela from returning in safety. *See Designation of Venezuela for Temporary Protected Status and*
12 *Implementation of Emp. Authorization for Venezuelans Covered by Deferred Enforced Departure*, 86 Fed.
13 Reg. 13,574 (Mar. 9, 2021) (hereinafter “2021 Designation”). Following the 2021 Designation, former
14 Secretary Mayorkas extended Venezuela’s TPS designation twice. *See Extension of the Designation of*
15 *Venezuela for Temp. Protected Status*, 87 Fed. Reg. 55,024 (Sept. 8, 2022); *see also 2023 Designation*,
16 88 Fed. Reg. 68,130.

17 On October 3, 2023, in addition to extending the 2021 Venezuela TPS status through September
18 2025, former Secretary Mayorkas redesignated Venezuela for TPS, effective from October 3, 2023,
19 through April 2, 2025. *2023 Designation*, 88 Fed. Reg. 68,130. This notice not only provided procedures
20 for initial applicants registering for TPS under the 2023 Designation but also allowed Venezuelan
21 nationals who had previously registered for TPS under the 2021 Designation to re-register for TPS and
22 apply to renew their Employment Authorization Document (EAD) with USCIS. *Id.* Finally, on January
23 10, 2025, former Secretary Mayorkas issued a notice extending the 2023 Designation for 18 months,
24 allowing a consolidation of filing processes such that all eligible Venezuela TPS beneficiaries (whether
25 under the 2021 or 2023 designations) could obtain TPS through October 2, 2026, and extend certain EADs.
26 *See Extension of the 2023 Designation of Venezuela for Temp. Protected Status*, 90 Fed. Reg. 5961 (Jan.
27 17, 2025) (hereinafter “2025 Extension”).

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1 On January 28, 2025, Secretary Noem vacated the 2025 Extension, thereby restoring the status
2 quo that preceded that decision. *See 2025 Vacatur*, 90 Fed. Reg. at 8805. In accordance with the
3 Immigration and Nationality Act (INA) and the APA, Secretary Noem explained her reasoning for the
4 Vacatur in the Federal Register Notice (FRN), stating that the 2025 Extension “did not acknowledge the
5 novelty of its approach” or “explain how it is consistent with the TPS statute.” *Id.* at 8807; *see* 8 U.S.C.
6 § 1254a(b)(3). Secretary Noem determined that the “lack of clarity” warranted a vacatur to “untangle the
7 confusion and provide an opportunity for informed determinations regarding the TPS designations and
8 clear guidance.” *Id.* In considering putative reliance interests, Secretary Noem provided that “Venezuela
9 2023 registrants will retain their temporary protected status under the pre-existing designation at least until
10 April 2, 2025,” and “[w]ith respect to any Venezuela 2021 registrants who elected, pursuant to the 2025
11 Extension, to register under the Venezuela 2023 designation, USCIS will restore their Venezuela 2021
12 registration.” *Id.* This Vacatur is consistent with an agency’s “statutorily implicit” authority to reconsider
13 TPS-related determinations and upon reconsideration, to vacate or amend the determination. *See* 8 U.S.C.
14 § 1103(a), 1254a(b)(3), (b)(5)(A); *see also Reconsideration and Rescission of Termination of the*
15 *Designation of El Salvador for Temporary Protected Status; Extension of the Temporary Protected Status*
16 *Designation for El Salvador*, 88 Fed. Reg. 40,282, 40,285 & n.16 (June 21, 2023) (“An agency has
17 inherent (that is, statutorily implicit) authority to revisit its prior decisions unless Congress has expressly
18 limited that authority. The TPS statute does not limit the Secretary’s inherent authority to reconsider any
19 TPS-related determination, and upon reconsideration, to change the determination.” (citing cases)).

20 A determination whether to extend the 2023 Venezuela designation was due by February 1, 2025.
21 After reviewing country conditions and consulting with the appropriate U.S. Government agencies,
22 Secretary Noem determined that Venezuela no longer continues to meet the conditions for the 2023
23 Designation. *See 2025 Termination*, 90 Fed. Reg. at 9040. Specifically, Secretary Noem determined that
24 “it is contrary to the national interest to permit the covered Venezuelan nationals to remain temporarily in
25 the United States.” *Id.* at 9041. Therefore, Secretary Noem terminated the 2023 Designation of Venezuela,
26 effective April 7, 2025. *Id.* In making this determination, she examined DHS’ review of country
27 conditions, acknowledging that “there are notable improvements in several areas, such as the economy,

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1 public health, and crime,” that allow for Venezuelan nationals to be “safely returned to their home
2 country.” *Id.* On that basis, she concluded that termination of the 2023 Designation was “required,” and
3 further explained that “national interest is an expansive standard that may encompass an array of broad
4 considerations” which “calls upon the Secretary’s expertise and discretionary judgment.” *Id.* at 9042.
5 Secretary Noem explained that the significant population of TPS holders has resulted in “associated
6 difficulties in local communities where local resources have been inadequate to meet the demands cause
7 by increased numbers,” and further underscored that, across the United States, “city shelters, police
8 stations and aid services are at maximum capacity.” *Id.* In considering national and immigration interests,
9 she found that this population includes members of Tren de Aragua, a transnational criminal organization
10 recently determined to “pos[e] threats to the United States.” *Id.* at 9042-43. Secretary Noem also observed
11 that “U.S. foreign policy interests, particularly in the Western Hemisphere, are best served and protected
12 by curtailing policies that facilitate or encourage illegal and destabilizing migration.” *Id.* at 9043.

13 STANDARDS OF REVIEW

14 The standards of review for relief under 5 U.S.C. § 705 and for preliminary injunctions are the
15 same. *See Sampson v. Murray*, 415 U.S. 61, 80 (1974). A preliminary injunction is “an extraordinary and
16 drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden
17 of persuasion.” *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). To get relief, a party must show
18 “he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of
19 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public
20 interest.” *Winter v. NRDC*, 555 U.S. 7, 20 (2008).

21 ARGUMENT

22 **I. THIS COURT LACKS JURISDICTION TO GRANT PLAINTIFFS THE RELIEF THEY** 23 **SEEK**

24 **A. Section 1252(f) Precludes Plaintiffs’ Requested Relief**

25 Here, the relief Plaintiffs seek would have the effect of enjoining or restraining DHS’s
26 implementation of the TPS provisions in section 244 of the INA, 8 U.S.C. § 1254a. But 8 U.S.C.
27 § 1252(f)(1) explicitly bars such relief. It provides: “Regardless of the nature of the action or claim or of

1 the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have
2 jurisdiction or authority to *enjoin or restrain* the operation of the provisions of part IV of this subchapter
3 ... other than with respect to the application of such provisions to an individual alien against whom
4 proceedings ... have been initiated.” 8 U.S.C. § 1252(f)(1) (emphasis added). Section 1254a is one of the
5 statutory provisions § 1252(f)(1) covers. Illegal Immigration Reform and Immigrant Responsibility Act
6 of 1996 (IIRIRA), div. C, Pub. L. No. 104-208, §§ 306, 308, 110 Stat. 3009-546. Although in the U.S.
7 Code, Section 1254a appears in Part V, the U.S. Code is inconsistent with the INA, wherein the TPS
8 provisions in Section 244 appear in Chapter 4. *Id.* When there is a conflict, the INA prevails. *See Galvez*
9 *v. Jaddou*, 52 F.4th 821, 830 (9th Cir. 2022) (“[T]he text of the United States Code ‘cannot prevail over
10 the Statutes at Large when the two are inconsistent.’”); *see also* Section 244 of the INA lies within chapter
11 4 of title II of the INA, as amended. Section 1252(f)(1) thus eliminates any court’s (other than the Supreme
12 Court’s) authority to issue coercive orders enjoining or restraining implementation of 8 U.S.C. § 1254a.

13 By invoking 5 U.S.C. § 705 and asking this Court to “postpone the effective date of the
14 challenged decisions[.]” Plaintiffs seek the type of coercive order prohibited by 8 U.S.C. § 1252(f)(1).
15 Regardless of how Plaintiffs name their motion or frame their claims, their requested relief is barred. An
16 order pursuant to 5 U.S.C. § 705 prevents – i.e. “enjoin[s] or restrain[s]” – DHS from implementing its
17 determinations about the designation of Venezuela for TPS and is thus jurisdictionally barred under
18 § 1252(f)(1). The Supreme Court has held that 8 U.S.C. § 1252(f)(1) “generally prohibits lower courts
19 from entering injunctions that order federal officials to take or *to refrain from taking* actions to enforce,
20 implement, or otherwise carry out the specified statutory provisions.” *Biden v. Texas*, 597 U.S. 785, 797
21 (2022) (quoting *Garland v. Aleman Gonzalez*, 596 U.S. 543, 544 (2022)) (emphasis added); *see* Black’s
22 Law Dictionary (12th ed. 2024) (defining injunction as “[a] court order commanding or preventing an
23 action”). As the Supreme Court held in *Aleman Gonzalez*, to “restrain” means to “check, hold back,
24 or prevent (a person or thing) from some course of action,” to “inhibit particular actions,” or to “stop (or
25 perhaps compel)” action. 596 U.S. at 549 (quoting 5 Oxford English Dictionary 756 (2d ed. 1989)). An
26 order postponing the effective date of implementation or enforcement of the vacatur and termination
27 determinations would necessarily constitute an order “restraining” federal officials. *Id.* at 550.

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1 Plaintiffs’ likely rejoinder is that stays differ from injunctions. But that argument relies on the
2 incorrect assumption that 5 U.S.C. § 705 creates a new form of remedy—a district court stay of agency
3 action that is distinct from an injunction. Section 705 does not, however, create any new remedies
4 beyond the traditional equitable relief that existed at the time of the APA’s passage. *See Scripps-Howard*
5 *Radio v. FCC*, 316 U.S. 4, 16–17 (1942). When Congress adopted § 705, there is no evidence that it
6 intended to create a wholly new, never-before-seen species of remedy. Instead, Congress simply codified
7 existing equitable remedies. Section 705 allows a court to issue only that “process” that is “necessary
8 and appropriate.” And the Supreme Court long ago concluded “[t]he relevant legislative history of that
9 section ... indicates that it was primarily intended to reflect existing law” permitting courts of appeals
10 to stay certain agency actions pending direct review authorized by statute in the same manner that
11 appellate courts can in certain circumstances stay a district court decision pending appeal. *Sampson*, 415
12 U.S. at 68 n.15; *see Scripps-Howard Radio*, 316 U.S. at 9-10 (“a federal court can stay the *enforcement of*
13 *a judgment pending the outcome of an appeal*” (emphasis added)). Section 705 was not intended “to fashion
14 new rules of intervention for District Courts.” *Id.* Thus, the text, context, legislative history, sources
15 contemporary to the APA’s passage, and relevant case law all show 5 U.S.C. § 705 does nothing
16 more than preserve traditional equitable relief—relief that 8 U.S.C. § 1252(f)(1) bars.

17 Plaintiffs do not seek an order that would operate on the individual removal proceedings or
18 some other agency adjudication pending judicial review. Plaintiffs instead ask this Court to
19 “prevent” the government from implementing its chosen “course of action” with respect to 8 U.S.C.
20 § 1254a. *See Aleman Gonzalez*, 596 U.S. at 549, 551 (orders requiring government to “refrain from
21 actions that (again in the Government’s view) are allowed” by covered provisions are barred by
22 § 1252(f)). Such an order, even if labeled a stay, is injunctive in effect and barred by 8 U.S.C.
23 § 1252(f)(1). Thus, Plaintiffs’ stay request is no different from an injunction – an equivalence
24 underscored by the preliminary-injunction standard applying to it.

25 Even if 8 U.S.C. § 1252(f)(1) did not apply, 5 U.S.C. § 705 by its own terms does not authorize
26 relief here because the challenged actions have already taken effect. Courts construing 5 U.S.C. § 705
27 have concluded that the phrase “postpone the effective date” of an agency action authorizes the
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1 “postpone[ment of] the effective date of *a not yet effective rule*, pending judicial review”—but not
2 suspension of a policy that is *already in effect*. *Ctr. for Biological Diversity v. Regan*, 507 F. Supp. 3d
3 173, 204 (D.D.C. 2022) (quoting *Safety-Kleen Corp. v. EPA*, Nos. 92-1629, 92-1639, 1996 U.S. App.
4 LEXIS 2324, at *2–3 (D.C. Cir. Jan. 19, 1996)) (emphasis added); *see also, e.g., State v. U.S. Bureau of*
5 *Land Mgmt.*, 277 F. Supp. 3d 1106, 1118 (N.D. Cal. 2017) (same). While these cases address an agency
6 decision to “postpone the effective date,” 5 U.S.C. § 705 uses identical language when referring to “the
7 reviewing court ... postpon[ing] the effective date of an agency action.” The use of an identical phrase in
8 the first and second sentences of § 705 must be presumed to be intentional. *See, e.g., Sorenson v. Sec’y of*
9 *Treasury*, 475 U.S. 851, 860 (1986) (“The normal rule of statutory construction assumes that identical
10 words used in different parts of the same act are intended to have the same meaning.”). Given its plain
11 meaning, the language in 5 U.S.C. § 705 allowing a court or agency to “postpone the effective date” can
12 only be read to mean that the statute allows the court “to put off until a future time,” “defer,” or “delay”
13 the “operative” date of the agency action. *See Merriam-Webster Dictionary*, [https://www.merriam-](https://www.merriam-webster.com/dictionary/effective)
14 [webster.com/dictionary/effective](https://www.merriam-webster.com/dictionary/effective) (last visited Mar. 2, 2025); *see also Black’s Law Dictionary Online* (2d
15 ed.), <https://thelawdictionary.org/?s=postpone> (last visited Mar. 3, 2025) (defining “postpone” as “to put
16 off; defer; delay; continue”). One cannot “defer” or “put off” an action that has already occurred; thus,
17 the issuance of a stay after the effective date of the challenged policy has already passed is beyond what
18 § 705 permits. *See Florida v. Mayorkas*, No. 3:23-cv-09962-TKW-ZCB, 2023 WL 3567851, at *4 (N.D.
19 Fla. May 16, 2023) (Section 705 stay unavailable because the policy was in effect when the complaint
20 was filed).

21 The 2025 Vacatur Plaintiffs seek to stay was published on February 3, 2025. *2025 Vacatur*, 90
22 Fed. Reg. at 8805. Thus, the publication of that determination means that its effective dates already
23 passed. *See id.* at 8806 (“The vacatur is effective immediately”). That 5 U.S.C. § 705 is disjunctive,
24 permitting reviewing courts to “postpone the effective date of an agency action *or to preserve status or*
25 *rights* pending conclusion of the review proceedings” (emphases added), does not change this result. An
26 order staying a policy after it has already gone into effect thus does not preserve the status quo, but rather,
27 *alters* it. *See, e.g., Ne. Ohio Coal. for Homeless & Serv. Emps. Int’l Union, Loc. 1199 v. Blackwell*, 467
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1 F.3d 999, 1006 (6th Cir. 2006) (explaining an order “preventing the implementation of new regulations”
2 would “disturb[]” rather than preserve “the status quo”); *Off. of Pers. Mgmt. v. Am. Fed’n of Gov’t Emps.*,
3 *AFL-CIO*, 473 U.S. 1301, 1305 (1985) (had the district court issued an order stopping rule from taking
4 effect that would alter the “status quo”).

5 **B. The TPS Statute Bars Plaintiffs’ Claims**

6 Additionally, the TPS statute itself unambiguously provides that “[t]here is no judicial review of
7 any determination of the [Secretary] with respect to the designation, or termination or extension of a
8 designation, of a foreign state” for TPS. 8 U.S.C. § 1254a(b)(5)(A). The statute thus makes clear that TPS
9 designation, extension, and termination determinations are committed to the unreviewable authority of the
10 Secretary. Accordingly, APA challenges to such determinations are prohibited. *See* 5 U.S.C. § 701(a)(1);
11 *Amgen, Inc. v. Smith*, 357 F.3d 103, 113 (D.C. Cir. 2004) (“If a no-review provision shields particular
12 types of administrative action, a court may not inquire whether a challenged agency decision is arbitrary,
13 capricious, or procedurally defective.”).

14 Plaintiffs acknowledge that the statutory language of § 1254a(b)(5)(A) clearly applies to “any
15 determination” made “with respect to the designation, or termination, or extension” of TPS. PI Mot. 17.
16 And despite alleging that Secretary Noem’s 2025 Termination of the 2023 Designation for Venezuela
17 violates the APA, Plaintiffs only argue in their PI Motion that they are likely to succeed on their APA
18 claim regarding Secretary Noem’s 2025 Vacatur determination. PI Mot. 4-11. To avoid the judicial review
19 limitation in 8 U.S.C. § 1254a(b)(5)(A), Plaintiffs argue that the Secretary’s decision to vacate the 2025
20 Extension was something other than a “determination.”³ *Id.* Not so.

21 Plaintiffs would have this Court believe that if the Secretary’s decision is not one specifically
22 labeled a designation, termination of a designation, or extension of a designation, then the decision falls
23 outside the scope of the statutory language. PI Mot. 17. However, the Court is prohibited from reviewing
24

25 ³ The basis for Plaintiffs’ assertion that none of the claims in their Complaint challenge a determination
26 to terminate the 2023 TPS designation by the Secretary is unclear, as Count II of Plaintiffs’ Complaint
27 clearly challenges the “order terminating the 2023 TPS designation for Venezuela.” Compl. ¶¶ 150-154.
Moreover, in Plaintiffs Motion, they explicitly state that “Secretary Noem’s decisions to vacate and
terminate TPS for Venezuelans” violated the Fifth Amendment. PI Mot. 11.

1 “any determination ... with respect to the designation, or termination or extension of a designation” of
2 TPS. 8 U.S.C. § 1254a(b)(5)(A). In its now vacated decision, the Ninth Circuit reviewed the exact statute
3 at issue here. *See Ramos v. Wolf*, 975 F.3d 872, 889 (9th Cir. 2020), *vacated by Ramos v. Wolf*, 59 F.4th
4 1010, 1011 (9th Cir. 2023).⁴ Comparing the term “determination” in § 1254a(b)(5)(A) with similar uses
5 of the word in provisions analyzed by the Supreme Court in *McNary v. Haitian Refugee Center, Inc.*, 498
6 U.S. 479, 486 n.6 (1991), and *Reno v. Catholic Soc. Servs., Inc.*, 509 U.S. 43, 53 (1993), the Ninth Circuit
7 stated that the reference to a determination “generally precludes direct review of the secretary’s country-
8 specific TPS determinations.” *Ramos*, 975 F.3d at 891. The inquiry does not end here, but rather this Court
9 must look to the surrounding text to understand what types of determinations are restricted from review.

10 The word “any,” modifying “determination” in § 1254a(b)(5)(A), indicates a broad sweep. *See*,
11 *e.g., Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 219 (2008) (“Read naturally, the word ‘any’ has an
12 expansive meaning, that is, ‘one or some indiscriminately of whatever kind’” (citation omitted)). The
13 phrase “with respect to” in § 1254a(b)(5)(A) is likewise broad in scope, as that phrase “is generally
14 understood to be synonymous with the phrase ‘relating to’” or “‘related to.’” *Cal. Tow Truck Ass’n v. City*
15 *& County of San Francisco*, 807 F.3d 1008, 1021 (9th Cir. 2015). And the Supreme Court has underscored
16 that the ordinary meaning of “related to” is “a broad one,” meaning “having a connection with or reference
17 to . . . , whether directly or indirectly.” *Dan’s City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 260 (2013).

18 The Supreme Court recently undertook a similar review of the phrase “any judgment regarding the
19 granting of relief” under enumerated provisions. *Patel v. Garland*, 596 U.S. 328 (2022). There, the
20 Supreme Court pointed out that it “has repeatedly explained, the word ‘any’ has an expansive meaning.”
21 *Id.* at 338 (quotations omitted) (citing *Babb v. Wilkie*, 589 U. S. 399, 405, n.2 (2020); Webster’s Third
22 New Int’l Dictionary, at 97 (defining “any” as “one or some indiscriminately of whatever kind”)). The
23 phrase “with respect to” is the equivalent of “regarding” or “concerning.” *Lamar, Archer & Cofrin, Llp v.*
24 *Appling*, 584 U.S. 709, 717 (2018); *see also Patel*, 596 U.S. at 339. The use of these phrases “in a legal

25
26 ⁴ This decision has been vacated and therefore has no precedential effect. *See, e.g., Durning v. Citibank,*
27 *N.A.*, 950 F.2d 1419, 1424 n.2 (9th Cir. 1991) (“[A] decision that has been vacated has no precedential
28 authority whatsoever.”). A vacated decision, however, “still carries informational and perhaps even
persuasive precedential value.” *DHX Inc. v. Allianz AGF MAT, Ltd.*, 425 F.3d 1169, 1176 (9th Cir. 2005).

1 context generally has a broadening effect, ensuring that the scope of a provision covers not only its subject
2 but also matters relating to that subject.” *Patel*, 596 U.S. at 339.

3 Within this framework, Secretary Noem’s Vacatur of the 2025 Extension falls well within the
4 statute’s “any determination” language and is a country-specific TPS determination relating to the prior
5 extension. For this reason, § 1254a(b)(5)(A) eliminates this Court’s jurisdiction to review any APA claim
6 regarding the 2025 Vacatur, including those raised by Plaintiffs regarding the substance of the Federal
7 Register Notice and facts that the Secretary considered. *See* PI Mot. at 8-11.

8 Plaintiffs’ interpretation of the statute also flouts the clear intent of Congress to grant the Secretary
9 broad and unreviewable discretion in the exercise of her responsibilities under the TPS statute, section
10 103(a) of the INA, 8 U.S.C. § 1103(a), and section 402 of the Homeland Security Act of 2002, 6 U.S.C.
11 § 202. *See L.A. Lakers, Inc. v. Fed. Ins. Co.*, 869 F.3d 795, 802 (9th Cir. 2017) (“We must also ‘assum[e]
12 that the legislative purpose is expressed by the ordinary meaning of the words used’ by the legislature.”)
13 (quoting *Richards v. United States*, 369 U.S. 1, 9 (1962)). The categorical review preclusion language in
14 8 U.S.C. § 1254a(b)(5)(A) makes clear that Congress did not intend to permit *anyone*, including an alien
15 or organization of aliens, to obtain review of the Secretary’s determinations regarding whether a
16 determination was proper. This includes the way the Secretary weighs how the determination impacts that
17 the administration of the program and the security conditions within the United States. 8 U.S.C.
18 § 1254a(b)(1)(C), *see Ramos*, 975 F.3d at 891 (“[T]he Secretary’s discretion to consider and weigh various
19 conditions in a foreign country in reaching her TPS determinations is not only broad, but unreviewable.”).

20 **II. PLAINTIFFS HAVE FAILED TO DEMONSTRATE A LIKELIHOOD OF SUCCESS ON**
21 **THE MERITS**

22 **A. The Secretary of Homeland Security May Vacate a Prior Extension of a Country’s**
23 **TPS Designation**

24 Even if this Court had jurisdiction to review the 2025 Vacatur and 2025 Termination, Plaintiffs
25 have not shown a likelihood of success on the merits that either determination violates the APA. When
26 Congress authorized the Secretary to designate foreign countries for TPS, it committed several underlying
27 policy questions to her discretion by statute and explicitly barred judicial review of sensitive foreign
28 relations determinations. The Secretary’s continuing border and national security responsibilities and

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1 broad discretionary authority over TPS require her to evaluate any potential threats to the safety and
2 security of the United States and permit her to change position, including vacating an extension which has
3 yet to go into effect. *See* 8 U.S.C. § 1254a(b)(3)(A) (The Secretary “... shall determine whether the
4 conditions for such designation under this subsection *continue to be met*.”) (emphasis added); *see also*
5 *Albertson v. FCC*, 182 F.2d 397, 399 (D.C. Cir. 2014) (“The power to reconsider is inherent in the power
6 to decide.”).⁵

7 Plaintiffs’ Motion diverges from the actual claims pleaded within their Complaint and attempts to
8 sever the Secretary’s 2025 Vacatur from her 2025 Termination of the 2023 Designation. While the
9 Secretary did issue two determinations, the Vacatur allowed for consideration of whether to terminate or
10 extend the designations for Venezuela. On September 8, 2022, DHS extended the 2021 Designation for
11 18 months. *See Extension and Redesignation of Venezuela for Temporary Protected Status*, 87 Fed. Reg.
12 55,024 (Sept. 8, 2022). On October 3, 2023, Secretary Mayorkas extended the 2021 Designation for
13 another 18 months with an expiration date of September 10, 2025. *2023 Designation*, 88 Fed. Reg. at
14 68,130. In the 2023 notice extending the 2021 Designation, former Secretary Mayorkas also redesignated
15 Venezuela for TPS status. *Id.* This action resulted in there being two separate and concurrent Venezuela
16 TPS designations, the registrations for which Secretary Mayorkas later combined when extending the
17 2023 Designation for another 18 months. *See 2025 Extension*, 90 Fed. Reg. at 5961 (Jan. 17, 2025). This
18

19
20 ⁵ Circuit courts have long recognized that an administrative agency has inherent or statutorily implicit
21 authority to “reconsider and change a decision if it does so within a reasonable period of time” if Congress
22 has not foreclosed this authority by requiring other procedures. *Mazaleski v. Treusdell*, 562 F.2d 701, 720
23 (D.C. Cir. 1977); *see, e.g., Kelch v. Dir., Nev. Dep’t of Prisons*, 10 F.3d 684, 687 (9th Cir. 1993) (applying
24 Nevada law holding “administrative agencies have an inherent authority to reconsider their own decision,
25 since the power to decide in the first instance carries with it the power to reconsider”); *Albertson*, 182 F.2d
26 at 399 (“The power to reconsider is inherent in the power to decide.”); *Macktal v. Chao*, 286 F.3d 822,
27 825-26 (5th Cir. 2002) (holding agency acted lawfully by exercising inherent authority to reconsider
28 decisions) (collecting cases); *see also The Last Best Beef, LLC v. Dudas*, 506 F.3d 333, 340 (4th Cir. 2007)
29 (“[F]ederal agencies . . . have broad authority to correct their prior errors. Indeed, when federal agencies
30 take erroneous or unlawful action, courts generally should not stand in the way of the agencies’
31 remediation of their own mistakes.” (citations omitted)); *Gun South, Inc. v. Brady*, 877 F.2d 858, 862
32 (11th Cir. 1989) (“[T]he Supreme Court and other courts have recognized an implied authority in other
33 agencies to reconsider and rectify errors even though the applicable statute and regulations do not
34 expressly provide for such reconsideration.”).

1 novel approach allowed Venezuelan applicants, who had registered under the 2021 Designation, to re-
2 register under the extended 2023 Designation, which provided the benefit of an additional 13 months of
3 status, without the Secretary making an independent determination regarding the 2021 Designation.

4 Employing Plaintiffs’ logic that Secretary Mayorkas’s complication of the Venezuela designations
5 was irrevocably binding, no Secretary of Homeland Security could ever vacate a designation or extension
6 of a designation, no matter the type of national security threat posed or the seriousness of the error or legal
7 defect in the prior determination. But the TPS statute itself does not mandate such a severe and unworkable
8 limitation of the Secretary’s ability to fulfill her border and national security responsibilities and exercise
9 her broad authority to administer and enforce the immigration laws, *see, e.g.*, 6 U.S.C. § 202(1)-(5), 8
10 U.S.C. § 1103(a)(1), (a)(3), and to do so consistent with the President’s Executive Orders. The Secretary
11 is authorized by statute to terminate a designation if she “determine[s]” that a foreign state “*no longer*
12 *continues* to meet the conditions for designation.” 8 U.S.C. § 1254a(b)(3)(A) (emphasis added). The
13 statute requires the Secretary to review conditions within foreign states designated for TPS, but any
14 subsequent action turns on the Secretary’s findings about whether the conditions for such designation
15 continue to exist. 8 U.S.C. § 1254a(b)(3)(A)-(C). Indeed, the statute inevitably requires the Secretary to
16 make determinations affecting the conduct of United States foreign policy. *See Harisiades v. Shaughnessy*,
17 342 U.S. 580, 588-89 (1952) (“[A]ny policy toward aliens is vitally and intricately interwoven with
18 contemporaneous policies in regard to the conduct of foreign relations [and] the war power.”). When the
19 Executive Branch acts in the field of foreign policy “... pursuant to an express or implied authorization of
20 Congress, [its] authority is at its maximum, for it includes all that [it] possesses in [its] own right plus all
21 that Congress can delegate.” *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952)
22 (Jackson, J., concurring) (cleaned up).

23 Here, Secretary Noem met all her statutory obligations. The Secretary issued the vacatur notice 17
24 days after the prior extension notice and stated that she would restore the registration of any 2021
25 Venezuela TPS recipients who re-registered in the interim. *See 2025 Vacatur*, 90 Fed. Reg. at 8807; *2025*
26 *Extension*, 90 Fed. Reg. at 5961; *see also 2023 Designation*, 88 Fed. Reg. at 68,132. The 2025 Vacatur
27 notice stated that it was issued to “untangle the confusion” caused by the 2025 Extension, which wove
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1 together two prior designations of Venezuela for TPS with different effective dates, “provid[ing] an
2 opportunity for ... clear guidance.” *2025 Vacatur*, 90 Fed. Reg. at 8807. The Secretary exercised the
3 inherent power of reconsideration she held under the TPS statute within a reasonable time and with the
4 intent to correct significant “deficiencies” in the 2025 Extension. *Id.*; see *Mazaleski*, 562 F.2d at 720.

5 Two days after she issued the 2025 *Vacatur*, the Secretary issued a notice terminating one of the
6 two Venezuela TPS designations, based on her finding that the presence of the covered persons *is*
7 “contrary to the national interest of the United States.” *2025 Termination*, 90 Fed. Reg. at 9042
8 (“[T]ermination of the 2023 Venezuela TPS designation is required because it is contrary to the national
9 interest to permit the Venezuelan nationals ... to remain temporarily in the United States.”) (cleaned up).
10 In her termination notice, the Secretary noted that “[n]ational interest” is an expansive standard that may
11 encompass an array of broad considerations, including foreign policy, public safety, national security,
12 migration factors, immigration policy, and economic considerations.” *Id.* (cleaned up); see *id.* n.5 (citing
13 cases). The TPS statute explicitly requires the Secretary to determine whether continuing to permit the
14 temporary presence of TPS beneficiaries from a foreign state designated under 8 U.S.C. § 1254a(b)(1)(C)
15 is “contrary to the national interest of the United States,” and she has done so. This national interest finding
16 is of a discretionary nature authorized by statute and clearly sounding in foreign policy. See 8 U.S.C.
17 § 1254a(b)(1)(C); cf. *Poursina v. USCIS*, 936 F.3d 868, 874 (9th Cir. 2019) (observing, in an analogous
18 INA context, “that the ‘national interest’ standard invokes broader economic and national-security
19 considerations, and such determinations are firmly committed to the discretion of the Executive Branch—
20 not to federal courts” (citing *Hawaii*, 585 U.S. at 684-86)).

21 Secretary Noem reasonably explained that the 2023 Designation notice was adopted without a
22 reasoned explanation or express consideration of the operational or legal impacts. *2025 Vacatur*, 90 Fed.
23 Reg. at 8807. This “implicitly negat[ed] the 2021 Venezuela TPS designation by effectively subsuming it
24 within the 2023 Venezuela TPS designation.” *Id.* By consolidating the registration processes for both the
25 2021 and 2023 TPS designations, the notice had the practical effect of extending the 2021 Designation by
26 up to 13 months and allowing for employment authorization for that period as well. See *id.* Accordingly,
27 she reasonably concluded that “vacatur is warranted to untangle the confusion and provide an opportunity

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1 for informed determinations regarding the TPS designations and clear guidance.” *Id.*

2 Plaintiffs’ argument that the 2025 Vacatur is impermissible because Secretary Noem “failed to
3 account for alternatives short of termination” also fails. PI Mot. at 10. In issuing the Vacatur, Secretary
4 Noem indicated that the decision to vacate provided “an opportunity for informed determinations
5 regarding the TPS designations and clear guidance.” 2025 Vacatur, 90 Fed. Reg. at 8807 (citing Exec.
6 Order No. 14159, *Protecting the American People Against Invasion*, § 16(b), 90 Fed. Reg. 8443 (Jan. 20,
7 2025)). Thus, the alternative of simply deconsolidating the re-registration periods would not meet the
8 stated reasons for the 2025 Vacatur and is neither arbitrary and capricious nor an impermissible decision.
9 The Secretary’s 2025 Vacatur of the 2025 Extension complied with the statute, was in accordance with
10 her authority to reconsider prior actions, and was consistent with her continuing obligation to safeguard
11 the border and national security of the United States and to administer and enforce the immigration laws.

12 **B. The Secretary’s Determinations to Vacate and Terminate the TPS Designation for**
13 **Venezuela Did Not Violate the Fifth Amendment Because the Determinations were**
14 **Related to Immigration Policy Objectives and Not Motivated by Racial Animus**

15 Plaintiffs cannot bypass the explicit bar on judicial review by framing their claim as a
16 constitutional challenge.⁶ See 8 U.S.C. § 1254a(b)(5)(A); *supra* § I.B. Even if this Court determines it has
17 jurisdiction to consider Plaintiffs’ constitutional claim here, the Secretary’s determinations to (1) vacate
18 the 2025 Extension and (2) terminate the 2023 Designation did not violate the Fifth Amendment. Plaintiffs
19 erroneously contend that racially “discriminatory intent was at least one motivating factor” for Secretary
20 Noem’s vacatur and termination determinations and that strict scrutiny under *Vill. of Arlington Heights*,
21 429 U.S. at 265, should apply. PI Mot. 11-12. The appropriate standard for any such review, however, is
22 set forth in *Hawaii*, 585 U.S. at 703-05. There, in determining that a rational basis standard should be
23 applied, the Supreme Court explained that “the upshot of [their] cases in this context is clear: ‘Any rule
24 of constitutional law that would inhibit the flexibility’ of the President ‘to respond to changing world
25 conditions should be adopted only with the greatest caution,’ and our inquiry into matters of entry and
26 national security is highly constrained.” *Id.* at 704.

27 ⁶ Section 1254a(b)(5)(A) provides a far clearer bar on review than the statutory provision at issue in
Webster v. Doe, 486 U.S. 592, 603-04 (1988).

1 Here, Secretary Noem’s 2025 Vacatur and 2025 Termination determinations are immigration
2 policies related to Government objectives of border and national security and foreign policy. The Supreme
3 Court “ha[s] long recognized the power to expel or exclude aliens as a fundamental sovereign attribute
4 exercised by the Government’s political departments largely immune from judicial control.” *Fiallo v. Bell*,
5 430 U.S. 787, 792 (1977). Because decisions in these matters implicate “relations with foreign powers”
6 and involve “classifications ... defined in the light of changing political and economic circumstances,”
7 such judgments “are frequently of a character more appropriate to either the Legislature or the Executive.”
8 *Mathews v. Diaz*, 426 U.S. 67, 81 (1976); *see also Galvan v. Press*, 347 U.S. 522, 531 (1954) (“Policies
9 pertaining to the entry of aliens and their right to remain here are peculiarly concerned with the political
10 conduct of government.”). The Supreme Court has accordingly made clear that decisions by the political
11 branches about which classes of aliens to exclude or expel will generally be upheld against constitutional
12 challenges so long they satisfy deferential rational-basis review. *Hawaii*, 585 U.S. at 704-05; *see also*
13 *Kleindienst v. Mandel*, 408 U.S. 753, 769-70 (1972) (judicial review of “[p]olicies pertaining to the entry
14 of aliens and their right to remain here” is limited to whether the Executive gave a “facially legitimate and
15 bona fide” reason for its action); *Mathews*, 426 U.S. at 82 (a “narrow standard of review” applies to
16 “decisions made by Congress or the President in the area of immigration and naturalization”);
17 *Shaughnessy*, 342 U.S. at 588–89. Although cases such as *Hawaii*, *Mandel*, and *Fiallo* involved policies
18 directed at aliens seeking to enter the country, those decisions equally support applying rational-basis
19 review in the specific context of these TPS determinations to aliens already present in the United States
20 where the basis for the termination is that “permitting the aliens to remain temporarily in the United States
21 is contrary to the national interest of the United States.” *2025 Termination*, 90 Fed. Reg. at 9040, 9042;
22 *see Hawaii*, 585 U.S. at 706 (If “there is persuasive evidence that the [policy] has a legitimate grounding
23 in national security concerns ... we must accept that independent justification”).

24 TPS decisions involve unique country-specific determinations that both “implicate relations with
25 foreign powers” and “involve classifications defined in the light of changing political and economic
26 circumstances,” *Hawaii*, 585 U.S. at 702, precisely the situation in which the Supreme Court has
27 repeatedly applied rational-basis review. *See id.*; *Fiallo*, 430 U.S. at 799. Secretary Noem’s 2025 Vacatur
28 Defendants’ Opp. To Plaintiffs’ Mot. to Postpone
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1 and 2025 Termination determinations easily pass rational-basis review. In enacting the TPS statute,
2 Congress provided for the availability of a temporary status to aliens who cannot safely return to their
3 home countries because of, *inter alia*, extraordinary and temporary conditions in those countries. *See*
4 8 U.S.C. § 1254a. Secretary Noem’s termination decision is “plausibly related” to the Government’s
5 national security interests as well as the objectives of the TPS program. *Hawaii*, 585 U.S. at 704-05; *see*
6 *also United States R.R. Retirement Bd. v. Fritz*, 449 U.S. 166, 179 (1980). After consulting with other
7 appropriate governmental agencies, including the Department of State, Secretary Noem determined that
8 permitting the Venezuelan nationals to remain temporarily in the United States is contrary to the national
9 interest of the United States. *2025 Termination*, 90 Fed. Reg. at 9040, 9042-43 (“Among these Venezuelan
10 nationals who have crossed into the United States are members of the Venezuelan gang known as Tren de
11 Aragua.” Historically, this gang “has been blamed for sex trafficking, drug smuggling, police shootings,
12 kidnappings, and the exploitation of migrants.”). Secretary Noem’s determination is fully consistent with
13 Congress’s goal of providing TPS to eligible aliens until the Secretary determines that the conditions for
14 the country’s TPS designation no longer continue to exist, including in this case that permitting such aliens
15 to remain in the United States is contrary to the U.S. national interest. Thus, under the rational basis test,
16 Plaintiffs’ equal protection claim fails.

17 Even under the heightened standard in *Arlington Heights*, Plaintiffs’ Equal Protection Claim is
18 likely to fail because they cannot establish racially discriminatory intent. Under the *Arlington Heights*
19 standard, Plaintiffs must prove that a racially “discriminatory purpose has been a motivating factor in the
20 [government’s] decision” to show a violation of the Equal Protection Clause. 429 U.S. at 265-266. In
21 2020, the Ninth Circuit analyzed an almost identical claim and held that under the *Arlington Heights*
22 standard, plaintiffs failed to present “even serious questions on the merits of their claim that the
23 Secretaries’ TPS terminations were improperly influenced by the President’s” alleged racial animus.
24 *Ramos*, 975 F.3d at 897 (internal quotations omitted); *see also Dep’t of Homeland Sec. v. Regents of the*
25 *Univ. of Cal.*, 591 U.S. 1, 34-35 (2020) (rejecting a similar equal protection claim where plaintiffs did not
26 show racial animus or disparate impact). Although the 2020 *Ramos* decision has since been vacated on
27 other grounds, the analysis is instructive.

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1 The Ninth Circuit held that the plaintiffs’ equal protection claim failed “due to the glaring lack of
2 evidence tying the President’s alleged discriminatory intent to the specific TPS terminations—such as
3 evidence that the President personally sought to influence the TPS terminations, or that any administration
4 officials involved in the TPS decision-making process were themselves motivated by” racial animus.
5 *Ramos*, 975 F.3d at 897. The Ninth Circuit reasoned that while there was record evidence that the President
6 “expressed racial animus against ‘non-white, non-European immigrants’” and “the White House
7 influenced the TPS termination decisions,” there was “no evidence linking the President’s animus to the
8 TPS terminations.” *Id.* Moreover, the panel explained, “[i]t is expected—perhaps even critical to the
9 functioning of the government—for executive officials to conform their decisions to the administration’s
10 policies” and the “mere fact that the White House exerted pressure on the Secretaries’ TPS decisions does
11 not itself support the conclusion that the President’s alleged racial animus was a motivating factor in the
12 TPS decisions.” *Id.* at 898. Finally, the Ninth Circuit addressed the plaintiffs’ arguments that the
13 circumstantial evidence and the historical background did not demonstrate that racial animus was a
14 motivating factor for the TPS terminations. *Id.* at 898-99.

15 Plaintiffs disregard the Ninth Circuit’s reasoning in *Ramos*, reiterating similar arguments before
16 this Court. As in *Ramos*, here, Secretary Noem provided reasoned explanations for her decision to
17 terminate Venezuela’s 2023 TPS Designation, and Plaintiffs have not demonstrated that she harbored
18 racial animus in making the vacatur or termination determinations at issue. Plaintiffs cite a multitude of
19 exhibits, arguing that Secretary Noem “made numerous contemporaneous statements that prove her
20 decisions sprung at least in part from racial animus.” PI Mot. at 12. They also assert that the circumstantial
21 evidence and historical background of the TPS determinations show that “improper purposes are playing
22 a role.” *Id.* at 13. But Plaintiffs fail to establish any direct link between the evidence they provide and
23 Secretary Noem’s determinations. For example, Plaintiffs cite a February 26, 2024, social media post by
24 Secretary Noem about “[n]ations like Venezuela.” ECF 37-1. But this post was made nearly a year before
25 the termination decision was published and focuses on the nation itself, not the race of its people. *See also*
26 ECF 37-2, 37-3, 37-4, 37-5 (social media posts from 2024); ECF 37-6 (unrelated social media post); ECF
27 37-12, 37-14, 37-15 (transcripts of confirmation hearing and interviews where immigration policy is
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generally discussed). National origin is inherently part of TPS. The express statements that Plaintiffs rely on in an attempt to show racial animus were made long before the TPS termination determination or taken out of context—and importantly, none of the statements pertain to race; rather, they concern the country itself. *See Ramos*, 975 F.3d at 898 (“[W]e find it instructive that these statements occurred primarily in contexts removed from and unrelated to TPS policy or decisions.”). The Secretary’s various statements reflect an emphasis on immigration policy that focuses on America’s economic and security interests, not racial or ethnic animus. An immigration policy that seeks to further American strategic and foreign policy interests cannot be the basis of an equal protection claim and is in fact contemplated by the TPS statute. *See* 8 U.S.C. § 1254a(b)(1)(C).

Plaintiffs’ conjecture is equally unpersuasive and does not show racial animus. PI Mot. 14-15. Plaintiffs speculate that the sequence of Secretary Noem’s determinations are “further evidence of Secretary Noem’s improper discriminatory purpose,” *id.* at 14, and the first Trump administration’s attempts to terminate TPS designations “show[] that the second Trump administration’s TPS decisions . . . are motivated by ‘invidious purposes.’” *Id.* at 14-15 (citing *Arlington Heights*, 429 U.S. at 267). The timing of Secretary Noem’s termination of the 2023 Designation, however, and the fact that the first Trump administration sought to terminate TPS designations for other countries, are not—without more—evidence of an “overarching goal [] motivated by racial animus.” *Ramos*, 975 F.3d 899. The Secretary’s efficiency is hardly a basis for invalidating her action.

Finally, Plaintiffs fall back on their previously rejected “cat’s paw” theory, PI Mot. 15, theorizing that Secretary Noem’s determinations are unconstitutional because the President’s animus directly influenced her decisions. *Id.* But the Ninth Circuit doubted that the “cat’s paw” theory would apply in this situation. *Ramos*, 975 F.3d at 897 (plaintiffs failed to “provide any case where such a theory of liability has been extended to governmental decisions in the foreign policy and national security realm”). Moreover, the “cat’s paw” approach would invite judicial second-guessing of an agency official’s actions based on mere allegations of discriminatory motive on the part of a different government official who may have played some role in the decision-making process. That would invite impermissible intrusion on privileged Executive Branch deliberations and potential litigant-driven discovery that would disrupt the Defendants’ Opp. To Plaintiffs’ Mot. to Postpone
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1 President's execution of the laws, *see Nixon v. Fitzgerald*, 457 U.S. 731, 749–50 (1982); *United States v.*
2 *Nixon*, 418 U.S. 683, 708 (1974) (“A President and those who assist him must be free to explore
3 alternatives in the process of shaping policies and making decisions and to do so in a way many would be
4 unwilling to express except privately.”). As such, under any review standard, Plaintiffs are unlikely to
5 succeed on the merits of their equal protection claim.

6 **III. ANY HARM PLAINTIFFS MAY SUFFER IS BASED ON THE INHERENT NATURE**
7 **OF THE TPS STATUTE**

8 “An essential element to the granting of a preliminary injunction is a showing of irreparable injury
9 to the moving party in its absence.” *Dollar Rent A Car of Washington, Inc. v. Travelers Indem. Co.*, 774
10 F.2d 1371, 1375 (9th Cir. 1985). Not just any showing of irreparable harm will suffice. A party “is only
11 entitled to an injunction that prevents [the] irreparable harm” that is “likely to occur.” *S. Yuba River*
12 *Citizens League v. Nat’l Marine Fisheries Serv.*, 804 F. Supp. 2d 1045, 1054 (E.D. Cal. 2011) (a party’s
13 “showing [of irreparable harm] is required in order to justify the specific measures that [the party]
14 request[s]”). Plaintiffs have failed to make the requisite showing here.

15 First, Plaintiffs contend that their allegations of APA and Fifth Amendment violations *per se*
16 constitute irreparable harm. Pl. Mot. 19-20. However, the alleged harms only occur if it is determined that
17 Defendants have violated Plaintiffs’ constitutional or statutory rights. As explained above, Plaintiffs have
18 not established a likelihood of success on the merits of those claims. *See* § II.

19 Second, Plaintiffs allege numerous injuries resulting from the 2025 Termination that are inherent
20 in the temporary nature of TPS. For example, Plaintiffs allege that, if they lose their TPS, “many of them
21 will be at immediate risk of detention [... and] deportation,” “will be in a state of limbo— undocumented
22 and without legal authorization to live and work in the United States,” or “will lose other alternative
23 pathways to permanent status....” Pl. Mot. 20-21. Plaintiffs further allege that the loss of TPS could result
24 in their separation from family members in the United States or having to bring their U.S. citizen children
25 to an unknown country. *Id.* at 21. While Plaintiffs heavily focus on the burden that TPS beneficiaries will
26 face should the termination be permitted to go into effect, the underlying cause of this harm flows from
27 the statute (“temporary” protected status) itself. *See*, 8 U.S.C. § 1254a(b)(1)(B)(i) (“substantial, but

temporary”), (b)(1)(B)(ii) (“unable, temporarily”), (b)(1)(C) (“extraordinary and temporary”), (g) (“remain in the United States temporarily”). Undeniably, the alleged harms would exist with or without the termination at issue. As explained, a country’s TPS designation must be reviewed at least every 18 months, and there is no guarantee of renewal. 8 U.S.C. § 1254a(b)(2)(B). A TPS beneficiary is therefore always subject to the same uncertainties and concerns that Plaintiffs allege here.

Because the very nature of TPS is temporary, as dictated by law, the potential for familial separation is not an irreparable harm arising from the termination of TPS for Venezuela, but rather the nature of the status. The cases cited by Plaintiffs in support of their argument that the separation of families constitutes irreparable harm as a matter of law are inapposite because the irreparable harms cited in those cases were not assessed against the backdrop of the inevitable termination of a temporary status. Pl. Mot. 22. For example, *Stanley v. Illinois*, 405 U.S. 645, 647 (1972), does not address whether the separation of families is an irreparable harm in the context of a temporary status that must come to an eventual end. *Stanley*, 405 U.S. at 647 (“granting a stay of removal in the context of persecution-based relief, but recognizing that “a noncitizen must show that there is a reason specific to his or her case, as opposed to a reason that would apply equally well to all aliens and all cases, that removal would inflict irreparable harm.”); *see also Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (finding that the potential irreparable harm of separating families did not justify a stay).

And even where Plaintiffs’ declarations have identified concrete harms, those harms will not be remedied by the requested injunction. The assurances that Plaintiffs seek can only be truly safeguarded through legislative action, not an injunction by this Court. Consequently, Plaintiffs have failed to show a likelihood of irreparable harm that could be remedied by this Court, and their request for a preliminary injunction should be denied. *See Taiebat v. Scialabba*, No. 17-civ-0805-PJH, 2017 WL 747460, at *5 (N.D. Cal. Feb. 27, 2017) (denying preliminary injunction where “plaintiff [could not] establish that the mandatory injunction he seeks would address the alleged harm”); *see also S. Yuba River Citizens League*, 804 F. Supp. 2d at 1057 (“[T]he court declines to order an interim measure that will provide no benefit . . . in the interim period.”); *Schrill v. Plunkett*, 760 F. Supp. 1378, 1384 (D. Or. 1990) (“Granting plaintiffs’ requested injunctive relief would not prevent the alleged” harm), *aff’d*, 932 F.2d 973 (9th Cir. 1991).

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1 **IV. THE BALANCE OF THE EQUITIES AND PUBLIC INTEREST WEIGH AGAINST**
2 **PRELIMINARY INJUNCTIVE RELIEF**

3 Notwithstanding Plaintiffs' failure to establish irreparable harm warranting the extraordinary relief
4 that they seek, Plaintiffs have not shown that the remaining equitable factors tip the balance in their favor.
5 As the Supreme Court has explained in the immigration context, the questions of harm to the defendant
6 and the public interest "merge." *Nken v. Holder*, 556 U.S. 418, 435 (2009). The government and the public
7 share an interest in ensuring that the process established by Congress – under which the Secretary of
8 Homeland Security has unreviewable authority to weigh the statutory factors governing TPS designations
9 – is followed as Congress intended. As Secretary Noem observed, vacatur of the 2025 Extension was
10 needed to "untangle the confusion [created by that Notice] and provide an opportunity for informed
11 determinations regarding the TPS designations and clear guidance." *2025 Vacatur*, 90 Fed. Reg. at 8807.

12 The government has an "obligation to prioritize the safety, security, and financial and economic
13 well-being of Americans." *Protecting the American People Against Invasion*, Exec. Order No. 14159, § 1,
14 90 Fed. Reg. at 8443. In this vein, "[e]nforcing [the n]ation's immigration laws is critically important to
15 the national security and public safety of the United States." Among the Venezuelan nationals currently
16 residing in the United States are members of the Tren de Aragua, a Venezuelan gang that poses a threat
17 to the public safety. *See 2025 Termination*, 90 Fed. Reg. at 9040, 9042-43. And, as explained in Secretary
18 Noem's 2025 Termination, Congress expressly required that the national interest of the United States be
19 considered in determining whether to extend or terminate Venezuela's TPS designation. Vacating the
20 2025 Extension allowed the government to take necessary steps to "ensur[e] that designations of [TPS]
21 are consistent with the provisions of [...] 8 U.S.C. 1254a[], and that such designations are appropriately
22 limited in scope and made for only so long as may be necessary to fulfill the textual requirements of that
23 statute" –in other words, to make certain the TPS designation is not being abused by individuals who
24 threaten national security and public safety. Exec. Order No. 14159, § 16(b), 90 Fed. Reg. at 8446.

25 Ultimately, the injunctive relief Plaintiffs seek would frustrate Secretary Noem's substantive
26 judgment as to how to implement the TPS statute in line with the government's established interests. *See*
27 *All. For the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1138 (9th Cir. 2011) ("We will not grant a preliminary

1 injunction unless those public interests outweigh other public interests that cut in favor of *not* issuing the
2 injunction”). Congress has given the Secretary, in consultation with the appropriate agencies, the broad
3 discretion to assess conditions in foreign countries and reach determinations regarding TPS. Where the
4 Secretary follows the statutory requirements, it is the public interest for the Court deny the extraordinary
5 remedy of preliminary injunctive relief and allow this matter to proceed along the ordinary course.

6 **V. PLAINTIFFS’ REQUESTED RELIEF IS OVERBROAD**

7 Even if a preliminary injunction (or “stay” accomplishing the same effect) were warranted here,
8 Plaintiffs have no basis to request universal relief benefitting non-parties. Under settled constitutional and
9 equitable principles, the Court may not issue relief that is broader than necessary to remedy actual harm
10 shown by specific Plaintiffs. *Gill v. Whitford*, 138 S. Ct. 1916, 1934 (2018); *Lewis v. Casey*, 518 U.S. 343,
11 358 n.5 (1996) (“[S]tanding is not dispensed in gross[.]”). A valid remedy “operate[s] with respect to
12 specific parties,” not with respect to a law “in the abstract.” *California v. Texas*, 593 U.S. 659, 672 (2021)
13 (quotation marks omitted). In this case, where sensitive foreign policy decisions of the Executive Branch
14 are implicated, an injunction should go no further than redressing any cognizable injuries to individual
15 named plaintiffs. *See Arizona v. United States*, 567 U.S. 387, 409 (2012) (holding the federal government
16 must speak “with one voice” in determining “whether it is appropriate to allow a foreign national to
17 continue living in the United States”). Universal injunctive relief here circumvents the requirement to limit
18 relief to the Parties. Plaintiffs, who do not raise class claims in their Complaint and have not moved to
19 certify a class under Rule 23, have made no effort to explain why they should be entitled to such sweeping
20 relief. Granting universal relief in this situation further encourages forum shopping and effectively
21 nullifies the decisions of other district or circuit courts nationwide. *See DHS v. New York*, 140 S. Ct. 599,
22 601 (2020) (Gorsuch, J., concurring); *see also Ramos*, 975 F.3d. at 902–06 (Nelson, J., concurring).

23 **CONCLUSION**

24 This Court lacks jurisdiction to review both determinations by Secretary Noem relating to the
25 2023 Designation of Venezuela for TPS and to grant Plaintiffs’ requested relief. Even if this Court were
26 to find that neither of the two clear jurisdictional bars applies, Plaintiffs’ claims fail on the merits and
27 the remaining factors do no support issuance of equitable relief.

1 Dated: March 3, 2025

Respectfully submitted,

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28 Defendants' Opp. To Plaintiffs' Mot. to Postpone
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document filed through the ECF system will be sent electronically to the registered participants, as identified on the Notice of Electronic Filing, and that paper copies will be sent to those indicated as non-registered participants.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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RIVAS, M.H., CECILIA DANIELA
GONZÁLEZ HERRERA, ALBA CECILIA
PURICA HERNÁNDEZ, E.R., and
HENDRINA VIVAS CASTILLO,

Plaintiffs,

v.

KRISTI NOEM, in her official capacity as
Secretary of Homeland Security, UNITED
STATES DEPARTMENT OF HOMELAND
SECURITY, and UNITED STATES OF
AMERICA,

Defendants.

Case No. 25-cv-1766

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION TO POSTPONE
EFFECTIVE DATE OF AGENCY ACTION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: March 27, 2025

Time: TBD

Place: TBD

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1 **NOTICE OF MOTION AND MOTION TO POSTPONE**

2 **EFFECTIVE DATE OF AGENCY ACTION**

3 PLEASE TAKE NOTICE THAT, on March 27, 2025, or as soon thereafter as this matter
4 may be heard, before the district judge of the United States District Court for the Northern District of
5 California assigned to this matter, Plaintiffs move under 5 U.S.C. § 705 of the Administrative
6 Procedure Act (“APA”) to “postpone the effective date of agency action.”¹

7 Plaintiffs seek an order postponing the effective date of Defendants’ decision of February 3,
8 2025 at 90 Fed. Reg. 8805. That decision purports to “vacate” the extension of Temporary Protected
9 Status (“TPS”) for Venezuela issued on January 17, 2025. Plaintiffs also seek an order postponing
10 the effective date of Defendants’ order of February 5, 2025 at 90 Fed. Reg. 9040, purporting to issue
11 a new decision terminating TPS for Venezuela.

12 To prevent irreparable harm, Plaintiffs request that the Court act ***no later than April 2, 2025***
13 to postpone the effective date of these decisions, and that it postpone them until such time as the
14 Court can resolve at trial whether the above orders are unlawful. In the alternative, and at a
15 minimum, Plaintiffs request that the Court act ***no later than April 2, 2025*** to postpone the effective
16 date of these decisions until such time as the Court can resolve Plaintiffs’ forthcoming motion for
17 summary judgment. Absent postponement of the effective date, the challenged orders will go into
18 effect on April 3, 2025, when employment authorization documents for nearly 350,000 Venezuelan
19 TPS holders who initially registered for TPS under Venezuela’s 2023 designation will expire. Those
20 TPS holders will lose their legal status and become subject to deportation (and in some cases
21 detention and summary deportation) on April 7, 2025.

22 This Motion is based upon this Notice of Motion and Motion; the accompanying
23 Memorandum of Points and Authorities; the supporting declarations and evidence filed concurrently
24 herewith; pleadings and filings in this case; any additional matter of which the Court may take
25 judicial notice; and such further evidence or argument as may be presented before, at, or after the
26

27 ¹ Plaintiffs intend to pursue negotiations with the government to shorten the time for hearing on this
28 motion, and if no agreement can be reached to a motion to shorten time.

1 hearing. Unless otherwise specified, all citations in the Memorandum of Points and Authorities to an
2 “Exhibit,” “Exhibits,” “Ex.” or “Exs.” refer to exhibits attached to the Declaration of Emi MacLean.

3
4 Date: February 20, 2025

Respectfully submitted,

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 This case challenges an unlawful decision to “vacate” the January 17, 2025 extension of
4 Temporary Protected Status (“TPS”) for Venezuela seventeen days after it became effective via
5 publication in the Federal Register. The vacatur disregards applicable law and procedure, and
6 springs from racial animus against Venezuelan TPS holders—labeled “dirtbags” by the Secretary of
7 Homeland Security. It would rob approximately 600,000 individuals of their lawful right to live and
8 work here for at least the next 18 months, shattering families and communities, including those of
9 the Individual Plaintiffs and members of the National TPS Alliance, an Associational Plaintiff.
10 Absent relief from this Court by April 2, 2025, nearly 350,000 of the targeted Venezuelan TPS
11 holders will lose employment authorization, and face deportation (including in some cases detention
12 and summary deportation) as soon as April 7, 2025. The rest of the Venezuelan TPS community
13 could lose status and employment authorization on September 10, 2025.

14 The vacatur is illegal for a host of reasons. This motion addresses three, any one of which
15 warrants postponement. Congress has empowered federal courts to step in when reviewing
16 administrative decisions alleged to be lawless, irrational, and arbitrary, and when allowing them to
17 go into effect would cause irreparable harm. The Administrative Procedure Act (“APA”) authorizes
18 district courts to “postpone” agency actions:

19 On such conditions as may be required and to the extent necessary to
20 prevent irreparable injury, the reviewing court ... may issue all
21 necessary and appropriate process to postpone the effective date of an
22 agency action or to preserve status or rights pending conclusion of the
23 review proceedings.

24 5 U.S.C. § 705 (“Section 705”); *Bakersfield City Sch. Dist. of Kern Cnty. v. Boyer*, 610 F.2d 621,
25 624 (9th Cir. 1979) (under Section 705 “the court may postpone or stay agency action pending such
26 judicial review”); *Centro Legal de la Raza v. Exec. Off. for Immigr. Rev.*, 524 F. Supp. 3d 919, 980
27 (N.D. Cal. 2021) (staying “effectiveness” of rule under Section 705). The factors courts consider for
28 a stay under Section 705 “substantially overlap with the *Winter* factors for a preliminary injunction”:
likelihood of success on the merits, irreparable harm, balance of the equities, and public interest.

1 *Immigr. Legal Res. Ctr. v. Wolf*, 491 F. Supp. 3d 520, 529 (N.D. Cal. 2020) (“*ILRC*”) (staying
2 effective date under Section 705 based on *Winter* factors).

3 The Court should exercise that authority here. *First*, DHS has no authority to “vacate” a TPS
4 extension. Congress established fixed time periods and procedures for terminations, which can occur
5 only after “*the expiration* of the most recent previous extension,” not at the whim of Secretaries. 8
6 U.S.C. § 1254a(b)(3)(B) (emphasis added). *Second*, the asserted reason for the vacatur—that the
7 registration process established by the extension violated the TPS statute because TPS holders who
8 initially applied under Venezuela’s 2021 designation were permitted to re-register pursuant to the
9 2023 designation—is irrational. The consolidation of registration processes for TPS recipients under
10 both designations was perfectly lawful. Secretary Noem’s manifest misunderstanding about how
11 TPS works cannot justify the draconian “remedy” of stripping every beneficiary of the protections
12 they received under the January 17, 2025 extension. *Third*, the evidence already confirms that
13 discriminatory intent played a role in Secretary Noem’s decisions, and decisions grounded even in
14 part on racial animus cannot stand.

15 The Court should postpone the agency’s lawless action to preserve the rights of nearly
16 600,000 TPS holders who would otherwise suffer irreparable harm. The balance of equities and
17 public interest overwhelmingly favor preserving the status quo. *ILRC*, 491 F. Supp. at 528–29. A
18 decision declaring the vacatur unlawful *after* it has gone into effect—after massive economic harms
19 from lost employment authorizations and an as-yet-unknown number of illegal deportations—could
20 never restore families and communities. In contrast, postponing the decision to allow judicial review
21 in an orderly fashion will work no discernable harm to the government. Nor could it when, less than
22 a month ago, DHS concluded on the *very same facts* that designating Venezuela advanced the public
23 interest. For all of these reasons, relief is warranted.

24 **STATEMENT OF THE ISSUE**

25 Should the Court postpone the vacatur of the TPS extension for Venezuela and the
26 subsequent termination of Venezuela’s 2023 designation under Section 705 in light of Plaintiff’s
27 showing of unlawful conduct and manifest irreparable harm?
28

STATEMENT OF THE RELEVANT FACTS

Created in 1990, TPS allows the Secretary to designate disaster-stricken countries for protected status for renewable periods of up to eighteen months. DHS must review the designations at least sixty days before the end of each designation period, and extend so long as the conditions for designation continue to be met. Designations remain operative until terminated under procedures specified in the statute. 8 U.S.C. § 1254a(b). Nationals of designated countries are eligible for lawful status and work authorization, provided they prove their presence in the United States as of the designation's effective date, establish continuous residence from a date set by the Secretary, and pass a criminal background check, with more than a single misdemeanor disqualifying. 8 U.S.C. §§ 1254a(c)(1)(A), (2)(B). Applicants must register "during the initial registration period," 8 C.F.R. § 244.2(f)(1), and periodically thereafter "in accordance with USCIS instructions." 8 C.F.R. § 244.17(a); *see also* 8 U.S.C. § 1254a(c)(1)(A)(iv).

The Secretary first designated Venezuela in March 2021, enabling Venezuelans already residing in the U.S. as of that date to apply. 86 Fed. Reg. 13694. In September 2022, Venezuela's designation was extended through March 2024. 87 Fed. Reg. 55024. In October 2023, then Secretary Mayorkas simultaneously announced an extension of the 2021 designation (through September 2025), and a re-designation which granted TPS protection for more recently arrived Venezuelans (effective October 3, 2023 through April 2, 2025). 88 Fed. Reg. 68130. The Secretary instructed eligible applicants—namely, Venezuelans who had resided in the U.S. since July 2023 "who currently do not have TPS"—to file initial applications under the re-designation. *Id.* The October 2023 decision thus created two different tracks for Venezuelan TPS holders: (a) those who initially registered under the 2021 designation, who could re-register under the October 2023 extension to receive TPS protections through September 2025, and (b) those who initially registered under the 2023 redesignation, who would receive TPS protections through April 2025. *Id.*

On January 17, 2025, Secretary Mayorkas announced an extension of the 2023 re-designation, along with a modification to the registration process. 90 Fed. Reg. 5961. To "ensure optimal operational processes" while "maintain[ing] the same eligibility requirements," Secretary Mayorkas permitted Venezuelans who had filed initial applications under either the 2021 or 2023

1 designations to re-register under the extension and receive lawful status and work permits through
2 October 2026. *Id.* at 5963. Secretary Mayorkas’s decision was published in the Federal Register and
3 became effective immediately. *Id.* at 5962, 5967; 8 U.S.C. § 1254a(b)(3)(C).

4 On January 28, 2025, three days after being sworn in as DHS Secretary, Secretary Noem
5 announced her intention to “vacate” the entire extension decision due to concerns about the
6 “consolidation of filing processes.” 90 Fed. Reg. at 8807, 9041. There is neither precedent nor
7 statutory authorization for such a vacatur. Days later, she published a new decision terminating
8 Venezuela’s 2023 designation. 90 Fed. Reg. 9040. Her purported justification was that permitting
9 Venezuelan TPS holders to remain in the country is “contrary to the national interest,” citing
10 President Trump’s directives and allegations about Venezuelan gang activities. *Id.* at 9042.

11 **ARGUMENT**

12 **I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS.**

13 Secretary Noem lacked authority to vacate the extension, and her stated reason for the
14 vacatur is arbitrary. The decision is also infected by racism. And the Court has jurisdiction to take
15 measures to prevent lawless agency action from inflicting irreparable harm.

16 **A. The Secretary Lacked Authority to Vacate the Extension for Venezuela.**

17 Secretary Noem asserts “inherent authority under the INA to reconsider any TPS-related
18 determination, and upon reconsideration, to vacate or amend the determination.” 90 Fed. Reg. at
19 8806. On that basis, she purported to replace an 18-month extension with a termination that takes
20 effect immediately upon the end of the prior designation period. But DHS has no “inherent
21 authority” to vacate TPS extensions. It contravenes the plain language of the TPS statute, which
22 specifies precisely how long extensions must last and when termination decisions take effect.

23 Contrary to the Secretary’s assertions, “[t]here is no general principle that what [an agency]
24 can do, [it] can undo.” *Gorbach v. Reno*, 219 F.3d 1087, 1095 (9th Cir. 2000) (en banc) (Attorney
25 General lacked inherent authority to denaturalize people allegedly granted citizenship in error). It is
26 “sometimes” true that Congress grants agencies such authority; it is “sometimes not.” *Id.*; *United*
27 *States v. Seatrains Lines, Inc.*, 329 U.S. 424 (1947) (agency lacked authority to modify shipping
28 certificate already issued). Whether it is always turns on the statutory scheme.

1 No provision of the TPS statute explicitly grants DHS authority to reconsider a TPS
2 extension. Secretary Noem relies on three provisions as implicitly granting such authority: Sections
3 1103(a), 1254a(b)(3), and 1254a(b)(5)(A). 90 Fed. Reg. at 8806 n.2. None even references vacatur.
4 For instance, Section 1103(a) is just a general grant “for carrying out [Secretary Noem’s] authority
5 under the provisions of” the immigration laws. By its terms, Section 1103(a) provides no *additional*
6 authority to do anything. At most, such “broad enabling statute[s]” provide authority to correct
7 “inadvertent ministerial errors.” *Am. Trucking Ass’n v. Frisco Transp. Co.*, 358 U.S. 133, 145–46
8 (1958). As a result, Secretary Noem must establish that the structure of the TPS statute necessarily
9 grants inherent authority to prematurely vacate extensions. As the Ninth Circuit recently explained:

10 An agency’s assertion of an implied general revocation authority may
11 . . . be sharply limited, or even foreclosed, when the statutory structure
12 negates that assertion of implied authority. That may be the case, for
13 example, when there is a specific statutory process for altering an
14 agency’s grant of a certificate, waiver, or other authorization. Where
15 Congress has provided a particular mechanism, with specified
16 procedures, for an agency to make such alterations, it is not reasonable
17 to infer an implied authority that would allow an agency to circumvent
18 those statutory procedural protections.

19 *China Unicom (Ams) Operations Ltd. v. FCC*, 124 F.4th 1128, 1149 (9th Cir. 2024) (cleaned up).

20 Applying this legal framework, courts have consistently rejected power grabs by agencies
21 asserting implied authority to undo decisions without regard to statutory procedures. Pertinent here,
22 where statutes provide “specific instructions,” those instructions “are to be followed scrupulously”
23 and “should not be modified by resort to such generalities as ‘administrative flexibility’ and ‘implied
24 powers’” *Civil Aeronautics Bd. v. Delta Airlines Inc.*, 367 U.S. 316, 325 (1961); *NRDC v. Regan*,
25 67 F.4th 397 (D.C. Cir. 2023) (holding EPA lacked implicit authority to rescind its position that a
26 contaminant should be regulated where, by statute, that conclusion triggered specific periodic review
27 process); *Am. Methyl Corp. v. EPA*, 749 F.2d. 826, 835 (D.C. Cir. 1984) (holding EPA lacked
28 implicit authority to revoke waiver permitting sale of fuel additive where statute established
mechanism for prohibiting sale of dangerous additives, including those “mistakenly waived into
commerce”). In particular, where a statute authorizes an agency to issue a license or benefit for a
“fixed term,” it “reflects a clear temporal expectation that, absent contrary indication in the statutory

1 text, such a license will *endure* for the length of that term. The use of a fixed term is []inconsistent
2 with []an implied power to revoke a license at any time.” *China Unicom*, 124 F.4th at 1148.

3 The fixed terms of TPS designations, extensions, and terminations, and the statutorily
4 prescribed processes governing how the Secretary must proceed after an initial TPS designation, are
5 inconsistent with implicit vacatur authority. Unless otherwise specified in the original notice, an
6 initial designation “take[s] effect upon the date of publication of the designation” and “shall remain
7 in effect until the effective date of the termination of the designation.” 8 U.S.C. § 1254a(b)(2). The
8 same is true of extensions. 8 U.S.C. § 1254a(b)(3)(C). “At least 60 days before the end of the initial
9 period of designation, and any extended period of designation,” the Secretary “after consultation
10 with appropriate agencies of the Government, shall review the conditions in the foreign state . . . and
11 shall determine whether the conditions for such designation under this subsection continue to be
12 met.” 8 U.S.C. § 1254a(b)(3)(A). The Secretary must “provide on a timely basis for the publication
13 of notice of such determination . . . in the Federal Register.” *Id.* If the Secretary determines “that a
14 foreign state . . . no longer continues to meet the conditions for designation” the Secretary “shall
15 terminate the designation by publishing a notice in the Federal Register.” 8 U.S.C. § 1254a(b)(3)(B).
16 Without such a determination, the designation “is extended.” 8 U.S.C. § 1254a(b)(3)(A) & (C).
17 Extensions take effect immediately, and last for the length of time specified in the notice, up to 18
18 months. *Id.* In contrast, a termination “shall not be effective earlier than 60 days after the date the
19 notice is published *or, if later, the expiration of the most recent previous extension.*” 8 U.S.C.
20 § 1254a(b)(3)(B) (emphasis added).

21 DHS cannot circumvent TPS’s clear statutory strictures by pretending to erase the January
22 17, 2025 extension from the books and proceeding as though it never existed. Under the TPS
23 scheme, there is only one way to terminate a TPS designation: the process described in
24 subsection (b)(3)(B). Moreover, because a termination “shall not be effective earlier than 60 days
25 after the date the notice is published *or, if later, the expiration of the most recent previous*
26 *extension,*” 8 U.S.C. § 1254a(b)(3)(B) (emphasis added), the “expiration of the [January 17, 2025]
27 extension” can occur no earlier than October 2, 2026. *Id.*; 90 Fed. Reg. 5962; 8 U.S.C.
28 § 1254a(b)(3)(B). Thus, the statute’s plain language prohibits any attempt to terminate Venezuela’s

1 TPS designation before October 2, 2026.

2 The purported vacatur offends still other provisions of the TPS regime. The vacatur purports
3 to negate an extension duly published in the Federal Register, which had already become effective.
4 *See* 8 U.S.C. § 1254a(b)(3)(A) (requiring publication of an extension in the Federal Register). Once
5 DHS published Secretary Mayorkas’s decision to extend Venezuela’s designation on January 17,
6 2025, the designation was *immediately* extended through October 2, 2026. The re-registration period
7 began *that day*. 90 Fed. Reg. 5962 (re-registration period “runs from January 17, 2025”). The notice
8 instructed TPS holders that “this Federal Register notice automatically extends [certain identified
9 EADs] through April 2, 2026 *without any further action on your part.*” *Id.* at 5967 (emphasis added).
10 It likewise instructed employers to “accept” an expired EAD accompanied by a copy of the January
11 17, 2025 Federal Register Notice as proof of work authorization through April 2, 2026. *Id.* at 5969–
12 70. Secretary Noem had no authority to countermand these duly-issued agency notices without
13 regard to TPS’s statutorily mandated timetables and procedures.

14 Secretary Noem may point to the fact that her predecessor rescinded a decision terminating
15 TPS for El Salvador. 90 Fed. Reg. 8806 n.2. Of course, even a consistent prior agency practice of
16 vacatur could not render it lawful if it violates express statutory requirements, but there is no such
17 regular practice here. The Biden-era rescissions of June 21, 2023 were the first and only such
18 decisions in the statute’s thirty year history, and they rescinded terminations, not extensions.
19 Moreover, those terminations had been *enjoined for five years*; they never took effect. Agencies have
20 flexibility to undo decisions already found unlawful by courts. *United Gas Improvement Co. v.*
21 *Callery Props., Inc.*, 382 U.S. 223, 229–30 (1965) (agency had power to “undo what is wrongfully
22 done” when original decision never became final and was overturned on judicial review). Equally
23 important, those rescissions set aside terminations, which do not implicate the reliance interests
24 underlying TPS. *Cf. McAllister v. United States*, 3 Cl. Ct. 394, 398 (1983) (agency lacked
25 reconsideration authority to correct error where plaintiff relied on initial decision).

26 Finally, any assertion by Defendants that their vacatur was permissible on the theory that the
27 January 17, 2025, extension was premature misreads the statute. The statute required a decision “at
28 least 60 days before” the end of the prior period, which was February 1, 2025. 90 Fed. Reg. 8806; 8

1 U.S.C. § 1254a(b)(3). DHS has historically published TPS decisions as early as 159 days before
2 expiration of a previous extension. *See, e.g.*, 73 Fed. Reg. 57128 (Oct. 1, 2008) (publishing
3 extension 159 days before expiration); 78 Fed. Reg. 32418 (May 30, 2013) (publishing extension
4 102 days before expiration). Nor is it unusual to extend protections shortly before a new
5 Administration starts. Indeed, President Trump designated Venezuela for DED on the last day of his
6 first term. *See* Presidential Memo. on Deferred Enforced Departure for Certain Venezuelans (Jan.
7 19, 2021), *available at* [https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-](https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-deferred-enforced-departure-certain-venezuelans/)
8 [deferred-enforced-departure-certain-venezuelans/](https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-deferred-enforced-departure-certain-venezuelans/).

9 In short, no matter how one construes the TPS statute, Secretary Noem exceeded her
10 authority by purporting to vacate a duly adopted, and already effective, extension. For this reason
11 alone, Plaintiffs have established a likelihood of prevailing on the merits.

12 **B. Even if DHS Had Vacatur Authority, the Vacatur Violated the APA for at Least**
13 **Three Separate and Independent Reasons, Each of Which Warrants**
14 **Postponement.**

15 In her “Reasons for the Vacatur,” the Secretary found no error in Secretary Mayorkas’s
16 January 17, 2025 determination that Venezuela met the conditions for TPS designation. 90 Fed. Reg.
17 8807. Instead, she took issue with the registration process he established, relying on reasoning that is
18 contrary to the law and fails to account for obvious and less draconian alternatives. Each of these
19 defects shows that Plaintiffs will likely prevail on their APA claims.

20 **1. The vacatur is founded upon legal errors.**

21 “If a reviewing court agrees that the agency misinterpreted the law, it will set aside the
22 agency’s action and remand the case.” *FEC v. Akins*, 524 U.S. 11, 25 (1998); *Grand Canyon Univ. v.*
23 *Cardona*, 121 F.4th 717 (9th Cir. 2024) (setting aside agency action due to legal error); *Nw. Env’t*
24 *Defense Ctr. v. Bonneville Power Admin.*, 477 F.3d 668 (9th Cir. 2007) (agency decision based on
25 misinterpretation of its own legal authority violated APA). The vacatur rests on two legal errors,
26 which individually and collectively warrant postponement.

27 *First*, Secretary Noem’s order misunderstands TPS redesignations. She objects that “[t]he
28 Mayorkas Notice adopted a novel approach of implicitly negating the 2021 Venezuela TPS
designation by effectively subsuming it within the 2023 Venezuela TPS designation.” 90 Fed. Reg.

8807. But there is nothing novel about a country being designated for TPS multiple times, and every earlier designation is “subsum[ed]” by a later one because redesignation *expands* the pool of potential beneficiaries to include not only those who qualified under an earlier designation, but also those who arrived *after* their country was first designated. *See* 8 U.S.C. § 1254a(c)(1)(A)(i) (TPS applicants must have been “continuously physically present in the United States since the effective date of the most recent designation of [their country]”).² Thus, TPS holders who initially registered for TPS under Venezuela’s 2021 designation had to prove they remained continuously present since March 9, 2021. 86 Fed. Reg. 13575. Accordingly, they necessarily also satisfied the later continuous presence requirement in Venezuela’s 2023 re-designation. 88 Fed. Reg. 68134 (setting October 3, 2023 continuous presence date); 8 CFR § 244.14(a)(2) (TPS holders must maintain continuous physical presence to remain eligible for TPS).

Second, Secretary Noem’s order misunderstands the TPS registration process. Secretary Noem critiques Secretary Mayorkas’s decision to allow 2021 TPS recipients to register under the 2023 designation as not “consistent with the TPS statute.” 90 Fed. Reg. at 8807. But in contrast to the TPS statute’s strict, mandatory instructions for designating countries for TPS, the statute gives the Secretary broad flexibility regarding how to register individuals for TPS. It requires only that TPS holders register “during the initial registration period announced by public notice,” 8 C.F.R. § 244.2(f)(1), and then periodically thereafter “in accordance with USCIS instructions.” 8 C.F.R. § 244.17(a); *see also* 8 U.S.C. 1254a(c)(1)(A)(iv) (requiring that applicants register “to the extent and in a manner which the [Secretary] establishes”). Moreover, all Venezuela 2021 TPS recipients necessarily filed initial applications during the initial registration period established by the 2021 designation. The January 2025 extension merely provided new instructions for *re*-registrations.

Secretary Mayorkas’s decision in the January 2025 Extension to instruct beneficiaries who initially registered under the 2021 designation to re-register under the 2023 designation was thus entirely consistent with the statute. Indeed, it is DHS’s standard practice to have a single re-

² The statute “explicitly contemplates more than one designation” for a country. 62 Fed. Reg. 16608-1. *See, e.g.*, 64 Fed. Reg. 61123 (1999 redesignation of Burundi); 66 Fed. Reg. 18111 (2001 redesignation of Angola); 76 Fed. Reg. 29000 (2011 redesignation of Haiti); 78 Fed. Reg. 1872 (2013 redesignation of Sudan).

1 registration process for TPS beneficiaries who initially registered under different designations of
2 their country. *See, e.g.*, 78 Fed. Reg. 1872 (re-designating Sudan for TPS); 79 Fed. Reg. 52027
3 (establishing one re-registration process for all TPS beneficiaries from Sudan, regardless which
4 designation they initially registered under); 88 Fed. Reg. 5028 (permitting “[i]ndividuals who
5 [initially registered for TPS under Haiti’s 2010 or 2011 designation and] currently retain their TPS
6 [through June 30, 2024] under the *Ramos* injunction” to “re-register” under a later re-designation to
7 receive TPS through August 3, 2024).

8 That those instructions resulted in an extension of some beneficiaries’ TPS beyond the end
9 date of the designation under which they initially registered (and through the end date of the later re-
10 designation) remained “consistent with the TPS statute.” 90 Fed. Reg. at 8807. The statute’s fixed 6,
11 12, and 18 month time periods are for country designations, not individual benefits, 8 U.S.C.
12 § 1254a(b), and the statute explicitly authorizes the Secretary to “stagger the periods of validity of
13 [TPS holders’] documentation and authorization in order to provide for an orderly renewal of such
14 documentation,” 8 U.S.C. § 1254a(d)(2).

15 Because the Secretary erred in assuming that the registration procedures in the January 17,
16 2025 extension were unlawful, her decision must be set aside. *FEC*, 524 U.S. at 25.

17 **2. The vacatur failed to account for alternatives short of termination.**

18 “[W]hen an agency rescinds a prior policy its reasoned analysis must consider the
19 alternatives that are within the ambit of the existing policy,” particularly when “serious reliance
20 interests” are implicated. *DHS v. Regents*, 591 U.S. 1, 30 (2020) (cleaned up) (holding DACA
21 rescission arbitrary and capricious where reason given was alleged illegality of one aspect of the
22 program and Secretary failed to consider whether agency could rescind just that aspect of it); *Motor*
23 *Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (agency
24 acted arbitrarily when it addressed problems with automatic seatbelts by rescinding airbag-or-
25 seatbelt requirement without considering airbag-only requirement; agency must articulate a “rational
26 connection between the facts found and the choice made”).

27 Secretary Noem, however, failed to consider whether her objections to consolidation of the
28 registration processes could be resolved by *de-consolidating the registration processes*, leaving

1 undisturbed other aspects of the extension. Even assuming there was a problem with consolidating
2 the registration periods for both cohorts of Venezuelan TPS holders, the Secretary should have
3 considered this obvious alternative, rather than vacating the whole extension, and for both cohorts.
4 This error was particularly egregious because DHS regularly revises TPS registration processes via
5 Federal Register notice. *See, e.g.*, 77 Fed. Reg. 76503 (Dec. 12, 2018) (extending registration
6 period). This defect also independently shows Plaintiffs are likely to prevail.

7 **C. The Vacatur and Termination Decisions Violated The Fifth Amendment.**

8 Secretary Noem’s decisions to vacate and terminate TPS for Venezuelans are
9 unconstitutional because they were motivated at least in part by impermissible animus against
10 Venezuelan immigrants, including TPS beneficiaries. The Fifth Amendment’s Due Process Clause
11 “contains an equal protection component” prohibiting federal government officials from
12 discriminating on the basis of race, ethnicity, or national origin. *Washington v. Davis*, 426 U.S. 229,
13 239 (1976); *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).³ Courts’ “approach to Fifth Amendment
14 equal protection claims has always been precisely the same as to equal protection claims under the
15 Fourteenth Amendment,” so cases that analyze equal protection claims under one context apply with
16 identical force to the other. *United States v. Carrillo-Lopez*, 68 F.4th 1133, 1139 (9th Cir. 2023),
17 *cert. denied*, 144 S. Ct. 703 (2024) (internal quotation marks omitted).

18 **1. Strict scrutiny applies to Plaintiffs’ Equal Protection claims.**

19 Courts utilize strict scrutiny to assess plausible allegations of official decisions motivated,
20 even in part, by a discriminatory purpose. *Arce v. Douglas*, 793 F.3d 968, 977 (9th Cir. 2015)
21 (decision that “is not facially discriminatory” is still “unconstitutional if its enactment or the manner
22 in which it [is] enforced were motivated by a discriminatory purpose”); *City of Cleburne v. Cleburne*
23 *Living Ctr.*, 473 U.S. 432, 440 (1985) (action subject to strict scrutiny “will be sustained only if [it
24 is] suitably tailored to serve a compelling state interest”). The limited exception for deferential
25 review adopted in *Trump v. Hawaii*, 585 U.S. 667 (2018) does not apply to TPS. *Ramos v. Nielsen*,

26
27 ³ The doctrinal and factual analysis is the same whether this claim is viewed as about race, ethnicity,
28 or national origin discrimination. *See, e.g.*, *United States v. Virginia*, 518 U.S. 515, 532 n.6 (1996)
(strict scrutiny applies to classifications based on national origin); *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 223–24 (1995) (strict scrutiny applies to classifications by ethnicity).

1 336 F. Supp. 3d 1075, 1105–06 (N.D. Cal. 2018) (rejecting deferential review as to TPS); *cf.*
2 *Regents*, 591 U.S. at 34 (plurality) (applying *Arlington Heights* for equal protection claim about
3 DACA).

4 To prove an Equal Protection violation, plaintiffs must offer “[p]roof of racially
5 discriminatory intent or purpose.” *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S.
6 252, 265 (1977). It suffices if “direct or circumstantial evidence” indicates a “discriminatory
7 purpose” was merely one “motivating factor,” not the “sole purpose.” *Ave. 6E Invs., LLC v. City of*
8 *Yuma, Ariz.*, 818 F.3d 493, 504 (9th Cir. 2016). Courts “[c]onsider the totality of the evidence,”
9 *Carrillo-Lopez*, 68 F.4th at 1140, and evidence of discriminatory intent can include the sequence of
10 events leading to a decision, departures from normal procedures or substantive conclusions, the
11 background of a decision, and disparate impact. *Arlington Heights*, 429 U.S. at 266–67. The
12 “administrative history may be highly relevant, especially where there are contemporary statements
13 by” decisionmakers. *Id.* at 268. Even when decisionmakers did not “expressly refer[] to race or
14 national origin,” their use of “code words,” “racially-loaded” comments, or “veiled” references can
15 “demonstrate discriminatory intent”; such statements can still “send a clear message and carry the
16 distinct tone of racial motivations and implications” and “convey[] the message that members of a
17 particular race are disfavored.” *Ave. 6E*, 818 F.3d at 505–07 (internal quotation marks omitted).
18 Extensive social science corroborates the common-sense conclusion that racial animus often is
19 conveyed via code-word and stereotypes. Young Dec. ¶¶ 20–33; *see also* Ex. 20 at 22 (documenting
20 use of racialized stereotypes about “depraved criminal[s] and rapist[s]”); Ex. 21 at 308 (explaining
21 the use of “code words” to justify the “oppression of Racial/Ethnic Minorities and immigrants”).

22 **2. Discriminatory intent was at least one motivating factor here.**

23 Even without discovery, Plaintiffs already have compelling direct and circumstantial
24 evidence of discriminatory intent for each and every *Arlington Heights* factor.

25 *First*, Secretary Noem made numerous contemporaneous statements that prove her decisions
26 sprung at least in part from racial animus. *Arlington Heights*, 429 U.S. at 266. She has justified
27 expelling Venezuelan immigrants with racial stereotypes, labeling them as “dirt bags,” “criminals,”
28 and “vicious,” supposedly rendering the U.S. unsafe, on the assumption that many, if not all, are

1 gang members, ex-convicts, or escaped from mental institutions, even though there is no evidence
2 for these assertions and the TPS statute effectively forecloses them through its criminal history bars.
3 Exs. 1-6; Ex. 12; Ex. 14 at 2–3, 5; Ex. 15 at 18–19. Courts have not hesitated to find equivalent
4 statements labeling people “drug dealer[s],” *McGinest v. GTE Serv. Corp.*, 360 F.3d 1103, 1117 (9th
5 Cir. 2004), or about “large families, unattended children, parking, and crime,” as adequate to prove
6 racial animus, *id.*; *accord Ave. 6E*, 818 F.3d at 505–07 (internal quotation marks omitted).

7 Secretary Noem did not bother with “code words” or “veiled” language. She lumped 600,000
8 Venezuelan TPS beneficiaries with “members of [the] TdA [gang],” Ex. 15 at 18; *see also* Ex. 12 at
9 104–105, despite the vanishingly small number of alleged TdA members in the U.S., dearth of
10 evidence that TdA has a “substantial U.S. presence,” and not a shred of proof that any TPS holders
11 have ties to the gang. Dudley Dec. ¶ 22 (organized crime expert finding that TdA “appears to have
12 no substantial US presence and looks unlikely to establish one”); Watson & Veuger Dec. ¶ 15 (no
13 evidence of connection to TPS holders); *see also* Exs. 23, 30, 34. Nonetheless, Noem characterized
14 the decision to extend TPS for “600,000 Venezuelans” as “alarming when you look at what we’ve
15 seen in different states . . . with gangs doing damage and harming the individuals and the people that
16 live there.” Ex. 12 at 104–105. And she asserted that Venezuelan immigrants came straight from
17 prisons or “mental health facilities,” Ex. 15 at 18, despite, again, no evidence whatsoever to support
18 that claim. Ex. 26 (fact check). Nor did she attempt to reconcile these false claims with the fact that
19 TPS applicants must undergo criminal background checks and are disqualified if they have more
20 than a single misdemeanor. 8 U.S.C. § 1254a(c)(2)(B)(i).

21 *Second*, the “specific sequence of events” leading to the vacatur and termination decisions,
22 including Secretary Noem’s “[d]epartures from the normal procedural sequence” and “[s]ubstantive
23 departures,” further “afford evidence that improper purposes are playing a role.” *Arlington Heights*,
24 429 U.S. at 267. Ordinarily, periodic review of a TPS designation for extension or termination takes
25 months and involves the input of numerous career specialists. *See Ramos*, 336 F. Supp. 3d at 1082.
26 Typically, the Refugee, Asylum and International Operations Directorate of USCIS prepares a
27 Country Conditions Memo, and the Office of Policy and Strategy of USCIS prepares a Decision
28 Memo containing USCIS’s recommendation. The DHS Secretary, who also receives input and

1 recommendations from the State Department and other government sources, reviews this work
2 product and makes a final decision. *Id.*

3 In contrast, Secretary Noem's TPS vacatur and termination decision-making process took
4 place over a week, at most. On January 17, 2025, presumably following months of factual input and
5 analysis, Secretary Mayorkas extended TPS for all Venezuelan beneficiaries until October 2026. On
6 January 28, 2025, only three days after she was confirmed, Secretary Noem vacated the extensions
7 (after stating in her confirmation hearing that the extensions were "alarming," Ex. 12 at 104, and, the
8 previous year, that deportations of Venezuelans should start on "DAY ONE" of President Trump's
9 term, Ex. 2). The January 28, 2025 decision was memorialized in the February 3, 2025 vacatur order.
10 Then, on February 5, 2025, she terminated TPS for Venezuelans whose TPS will expire in April
11 2025. Compressing a process that usually takes months to mere days is an unprecedented
12 "departure[]" from the normal procedural sequence. *Arlington Heights*, 429 U.S. at 267. This charade
13 of a decision-making process constitutes further evidence of Secretary Noem's improper
14 discriminatory purpose.

15 *Third*, the "historical background of the decision" shows the elimination of TPS for
16 Venezuelans is the latest in "a series of official actions taken for invidious purposes." *Id.* As this
17 court and others found, during the first Trump administration the White House relentlessly pressured
18 DHS Secretaries to terminate TPS for virtually all recipients. This reflected President Trump's view
19 that TPS beneficiaries were "people from shithole countries," as opposed to people from countries
20 "such as Norway"—remarks he continues to defend. *Ramos*, 336 F. Supp. 3d at 1098, 1100
21 (concluding after extensive discovery that Trump "has expressed animus against non-white, non-
22 European immigrants" and, through surrogates in the White House, sought to influence DHS
23 decision-makers); Ex. 16 ("shithole countries" comment); Ex. 24 (defending comparisons between
24 "nice countries . . . like Denmark, Switzerland" and "Norway" and "unbelievable places and
25 countries"). Other courts to consider the merits also found the decisions pretextual or otherwise
26 arbitrary. *Centro Presente v. DHS*, 332 F. Supp. 3d 393, 417 (D. Mass. 2018); *Saget v. Trump*, 375
27 F. Supp. 3d 280, 354–59 (E.D.N.Y. 2019); *CASA de Md., Inc. v. Trump*, 355 F. Supp. 3d 307, 327–
28 28 (D. Md. 2018). This historical context further shows that the second Trump administration's TPS

1 decisions, like those of the first, are motivated by “invidious purposes.” *Arlington Heights*, 429 U.S.
2 at 267.

3 *Fourth*, the disparate “impact of the official action,” and “whether it bears more heavily on
4 one race,” is relevant in assessing discriminatory intent. *Id.* at 266 (internal quotation marks
5 omitted). Here, Secretary Noem’s decision to vacate and terminate TPS for hundreds of thousands of
6 Venezuelans with that status “bears more heavily” on people perceived in this country as non-white.
7 Every one of the *Arlington Heights* factors thus demonstrate Secretary Noem’s vacatur and
8 termination decisions were motivated at least in part by discriminatory animus against Venezuelan
9 immigrants, violating the anti-discrimination guarantee of the Fifth Amendment, and establishing a
10 likelihood of prevailing on the merits.

11 *Finally*, were the evidence of Secretary Noem’s own animus insufficient, the decision would
12 still be unconstitutional in light of direct evidence that President Trump’s animus directly influenced
13 her decision. *See, e.g., Poland v. Chertoff*, 494 F.3d 1174, 1182 (9th Cir. 2007) (holding “cat’s paw”
14 doctrine recognizes that one official’s animus may improperly infect a decisionmaker’s action). Her
15 termination order relies almost entirely on President Trump’s directives—his Executive Order,
16 “Protecting the American People Against Invasion”; his “recent, immigration and border-related
17 executive orders and proclamations [which] clearly articulated an array of policy imperatives bearing
18 upon the national interest”; his declaration of a “national emergency at the southern border”; and his
19 directive to put “America and American citizens first.” 90 Fed. Reg. 9042–43. The upshot is clear:
20 President Trump expected Secretary Noem to terminate TPS for Venezuelans and other non-white
21 immigrants, and she was all too glad to comply, and indeed to adopt President Trump’s animus as
22 her own. Accordingly, whether President Trump harbors discriminatory animus against Venezuelan
23 TPS beneficiaries properly bears on this Court’s equal protection analysis.

24 Like Secretary Noem, President Trump has championed racial animus against TPS holders
25 generally and Venezuelans in particular. *See generally* Exs. 7–11, 13, 16–19. The phrase “America
26 First” itself invokes a tragic history of racial hatred..⁴ For nearly a decade, he has denigrated non-

27 ⁴ This history is well-documented. *See* Brief of Amici Curiae, *The Anti-Defamation League, et. al,*
28 *Ramos v. Nielson*, Case No. 18-16981, ECF No. 31 at 21 (9th Cir Feb. 7, 2019). Defendants could

1 white, non-European immigrants and expressed his interest in encouraging migration instead from
2 overwhelmingly white countries. One federal court in this district found at least serious questions as
3 to whether his prior administration’s attempt to terminate TPS was motivated by racial animus.
4 *Ramos v. Nielsen*, 336 F. Supp. 3d 1075, 1097 (N.D. Cal. 2018), *vacated and remanded sub nom.*,
5 *Ramos v. Wolf*, 975 F.3d 872 (9th Cir. 2020), *reh’g en banc granted, op. vacated*, 59 F.4th 1010 (9th
6 Cir. 2023).

7 President Trump has continued making such statements since that finding. He too has falsely
8 claimed, repeatedly, that Venezuela and other countries had “emptied out” their “jails and mental
9 institutions” into the Ex. 9 at 9–10, 32; Ex. 11 at 11; Ex. 13 at 4–5, 22–23; Young Dec ¶ 30. He has
10 repeatedly referred to Venezuelan immigrants as “animals,” and labeled them all as criminals. Ex. 9
11 at 32–34; Exs. 17, 18, 19, 32,. Unfortunately, such statements follow in a long tradition of racist
12 statements by government officials seeking to justify attacks on immigrant communities, and they
13 plainly reveal President Trump’s racial animus against Venezuelans. Young Dec ¶ 31. Because—as
14 recounted in her termination order—Secretary Noem acknowledged that she terminated TPS for
15 Venezuelans under President Trump’s influence, his discriminatory purpose supports Plaintiffs’
16 equal protection challenge, giving rise to an independent basis to postpone those decisions as
17 infected by racial animus.

18 **D. The Court Has Jurisdiction to Consider Plaintiffs’ Claims.**

19 Defendants may argue that this Court lacks subject matter jurisdiction to consider Plaintiffs’
20 claims, but such arguments would be meritless. Plaintiffs assert (1) DHS exceeded its statutory
21 authority in purporting to “vacate” a prior TPS extension decision, because the statute provides no
22 such authority; (2) even if DHS had such authority, DHS acted arbitrarily because its reasons do not
23 support the vacatur decision; and (3) the DHS Secretary was motivated by racial animus in violation
24 of the Fifth Amendment. Those claims are cognizable under the Administrative Procedure Act’s
25 general provision for judicial review of agency action, 5 U.S.C. § 702; the general grant of federal
26 question jurisdiction, 28 U.S.C. § 1331; and, as to the constitutional claim, under the Constitution

27 _____
28 not identify any other meaning in response to questions from this Court in prior litigation concerning
TPS terminations which were justified by the same reasoning. *Ramos*, 336 F. Supp. 3d at 1104.

1 itself. Federal courts have consistently exercised jurisdiction over challenges to agency action on
2 these bases. *See Biden v. Nebraska*, 600 U.S. ____, 143 S. Ct. 2355, 2375 (2023) (holding agency
3 acted in excess of statutory authority); *Regents*, 591 U.S. at, 33 (holding agency decision arbitrary
4 because not supported by adequate reasoning); *Jean v. Nelson*, 472 U.S. 846 (1985) (addressing
5 challenge to race discrimination in border enforcement).

6 The government may argue that Congress stripped this Court of jurisdiction to hear cases like
7 this one in the TPS statute, which provides:

8 There is no judicial review of any determination of the Attorney
9 General with respect to the designation, or termination or extension of
a designation, of a foreign state under this subsection.

10 8 U.S.C. § 1254a(b)(5)(A). But that provision bars review only of certain “determination[s]”—those
11 respecting designation, termination, or extension of TPS. By its terms the February 3, 2025 order is
12 none of those, but instead a “vacatur” based on implicit statutory authority.

13 Even if the February 3, 2025 order were one of the actions specified in Section
14 1254a(b)(5)(A), it would still be reviewable because Plaintiffs’ claims do not challenge any
15 “determination.” Determination is a term of art in the jurisdiction-stripping context. Both the
16 Supreme Court and the Ninth Circuit have consistently read that term to preserve review over claims
17 like those Plaintiffs raise. Plaintiffs’ first APA claim challenges the agency’s asserted authority to
18 vacate prior extension decisions, while the second challenges the rationality of this particular
19 vacatur, and the third challenges the Secretary’s motivation on constitutional grounds. None of those
20 claims challenges any “determination” made “with respect to the designation, or termination, or
21 extension” of TPS. Indeed, the conclusions they challenge did not take place in a termination at all,
22 but rather in a purported “vacatur,” which the Secretary claims implicit authority to issue.

23 Governing caselaw confirms that the statute’s bar on review of “determinations” does not
24 foreclose Plaintiffs’ APA claims. In four separate immigration cases, the Supreme Court and this
25 Court have read jurisdiction stripping statutes that constrain review over “determinations” to not
26 preclude claims challenging agency action that is collateral to the determinations themselves.

27 As *McNary v. Haitian Refugee Ctr.*, the first of these cases, explained, “the reference to ‘a
28

1 determination’ describes a single act rather than a group of decisions or a practice or procedure
2 employed in making decisions” 498 U.S. 479, 492 (1991) (challenge to adjudication procedures
3 did not require review of a “determination”); Congress “could easily have used broader language”
4 had it wanted to bar “all causes ... arising under” the statute, or “on all questions of law and fact” in
5 such suits, rather than merely review of a “determination.” *Id.* at 492–94; *Reno v. Catholic Soc.*
6 *Servs., Inc.*, 509 U.S. 43, 56–58 (1993) (“CSS”) (applying *McNary* to find jurisdiction over
7 challenges to practice governing legalization applications); *Immigrant Assistance Project of AFL-*
8 *CIO v. I.N.S.*, 306 F.3d 842, 862–63 (9th Cir. 2002) (“*IAP*”) (challenge to rule interpreting the
9 statute cognizable); *Proyecto San Pablo v. I.N.S.*, 189 F.3d 1130, 1138 (9th Cir. 1999) (challenge to
10 pre-adjudication practices cognizable).

11 *McNary* and its progeny confirm this Court has jurisdiction. Under the principle they
12 establish, a claim does not challenge a “determination” unless it seeks relief that would *dictate the*
13 *substantive outcome* of the underlying agency decision. Here, nothing in the relief Plaintiffs seek
14 would bar the Secretary from making a termination decision, provided she follows the timeline and
15 procedures required by the statute and acts with permissible motives. Moreover, the claims Plaintiffs
16 raise concern the legality of the Secretary’s vacatur order, which is not itself a decision to terminate
17 TPS status at all. In addition, the substance of the vacatur decision focuses on alleged defects in the
18 TPS registration process, which is addressed in subsection (c) of the statute, whereas the jurisdiction-
19 stripping provision concerns determinations made under subsection (b). 8 U.S.C. § 1254a(b)(5)(A)
20 (prohibiting review of certain determinations “under this subsection”). Plaintiffs’ claims thus do not
21 challenge any determination made in a designation, extension, or termination decision, but rather
22 only collateral legal defects in the Secretary’s TPS decision-making process.

23 Were there any doubt, it would be resolved in Plaintiffs’ favor by an important background
24 principle: “The APA establishes a basic presumption of judicial review [for] one suffering legal
25 wrong because of agency action.” *Regents*, 591 U.S. at 16 (internal quotation marks omitted). The
26 Court has applied that “strong presumption” to find review available even under statutes with
27 language far more preclusive than that here. *See, e.g., Bowen v. Mich. Acad. of Fam. Physicians*, 476
28 U.S. 667, 678–79, 681 (1986) (construing statute stating “[n]o action ... shall be brought under

1 section 1331 or 1346 of title 28 to recover on any claim arising under this subchapter,” as
2 inapplicable to general statutory and constitutional challenges) (quoting 42 U.S.C. § 405(h)). Even if
3 Plaintiffs’ claims could be understood to challenge a “determination” under Section 1254a(b)(5)(A),
4 that provision still would not bar Plaintiffs’ claims because they are not brought “under this
5 subsection,” but instead under the APA and the Fifth Amendment. *Johnson v. Robison*, 415 U.S.
6 361, 367 (1974) (“A decision of law or fact ‘under’ a statute” means only a decision regarding “the
7 interpretation or application of a particular provision of the statute *to a particular set of facts.*”) (emphasis added); *Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 274–75 (2016) (APA claim did
8 not arise “under” analogous provision) (quoting 35 U.S.C. § 314(d)).

9
10 Finally, Plaintiffs’ constitutional claim is cognizable for the additional reason that Section
11 1254a(b)(5)(A) does not mention constitutional claims. The Supreme Court has applied an extremely
12 stringent clear statement rule in this respect; it has *never* read a stripping provision to entirely
13 foreclose review of a colorable constitutional claim. Reading this statute to accomplish that result
14 could well render it unconstitutional. *See Bowen*, 476 U.S. at 680–81 (rejecting “extreme” position
15 interpreting statute to foreclose constitutional claims). Section 1252(a)(2)(B)(ii) also does not
16 foreclose review because the TPS statute does not “specif[y]” that the Secretary has discretionary
17 authority to vacate TPS decisions—it makes no reference to vacatur at all. Nor does it specify the
18 Secretary has discretion to issue terminations. Rather, it mandates termination if the criteria for
19 designation no longer exist, and mandates extension if the Secretary determines that the criteria
20 remain satisfied. 8 U.S.C. § 1254a(b)(3).

21 **II. VENEZUELAN TPS HOLDERS FACE PROFOUND AND IRREPARABLE HARM.**

22 The factors bearing on whether to grant a postponement under Section 705 “substantially
23 overlap with the *Winter* factors for a preliminary injunction,” *ILRC*, 491 F. Supp. 3d at 529, which
24 focuses on the likelihood of “irreparable harm in the absence of preliminary relief,” *Winter v. Nat.*
25 *Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). “It is well established that the deprivation of
26 constitutional rights ‘unquestionably constitutes irreparable injury.’” *Hernandez v. Sessions*, 872
27 F.3d 976, 994 (9th Cir. 2017) (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)).
28 “When an alleged deprivation of a constitutional right is involved, most courts hold that no further

1 showing of irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th
2 Cir. 2005) (cleaned up). A procedural injury may also “serve as a basis for a finding of irreparable
3 harm” *California v. HHS*, 281 F. Supp. 3d 806, 829–30 (N.D. Cal. 2017). A party “experiences
4 actionable harm when ‘depriv[ed] of a procedural protection to which he is entitled’ under the
5 APA.” *N. Mariana Islands v. United States*, 686 F. Supp. 2d 7, 17 (D.D.C. 2009) (quoting *Sugar*
6 *Cane Growers Coop. of Fla. v. Veneman*, 289 F.3d 89, 94–95 (D.C. Cir. 2002)). For the reasons
7 discussed above, Defendants have violated Plaintiffs’ constitutional and statutory rights.

8 But the irreparable injury here extends far beyond the harms associated with ordinary
9 constitutional violations. Defendants’ actions will upend the lives of more than 600,000 Venezuelan
10 TPS holders. In a matter of weeks, nearly 350,000 Venezuelan TPS holders will lose their
11 immigration status and work authorizations. Shortly afterward, another 250,000 Venezuelan TPS
12 holders expect to face a similar fate. These TPS holders live lawfully in this country—working,
13 paying taxes, obeying the law, and contributing to society. *See generally* Pérez Dec. Defendants’
14 actions have already inflicted irreparable injury on thousands of TPS holders and their families who
15 fear what will happen to them in the coming weeks and months. As shown below and in Plaintiffs’
16 declarations, they will suffer significant further irreparable harm if this Court does not issue
17 preliminary relief. *Id.*

18 If TPS holders lose their legal status, many of them will be at immediate risk of detention at
19 the hands of ICE officials and, potentially, immediate deportation. *See* Tolchin Dec. ¶ 23; *see, e.g.*,
20 E.R. Dec. ¶¶ 2, 18; M.R. Dec. ¶¶ 13, 18; M.H. Dec. ¶¶ 11, 16–17, 20; Arape Rivas Dec. ¶ 14; Vivas
21 Castillo Dec. ¶ 21. Those not arrested will be in a state of limbo—undocumented and without legal
22 authorization to live and work in the United States, but with nowhere to go. *See, e.g.*, Guerrero Dec.
23 ¶ 20; E.R. Dec. ¶ 20; Palma Dec. ¶ 33. Many Venezuelan TPS holders simply cannot safely return to
24 Venezuela because they will suffer severe harm at the hands of the Maduro regime, while others
25 could not return even if they wanted to because they cannot renew their passports. *See, e.g.*, Vivas
26 Castillo Dec. ¶¶ 7–9; E.R. Dec. ¶ 20; Guerrero Dec. ¶¶ , 17; Arape Rivas Dec. ¶ 2; M.H. Dec. ¶ 24;
27 Purica Hernandez Dec. ¶ 10.

28 Many Venezuelan TPS holders who face grave harm if returned have sought asylum, but

1 those applications have been pending for years due to a severe asylum backlog. Ex. 22 (estimated
2 wait time of over six years for claims before USCIS, and over four years for claims before EOIR).
3 *See, e.g.*, Guerrero Dec. ¶¶ 6, 14 (sought asylum one month after arrival, application has been
4 pending for nine years); González Herrera Dec. ¶ 6; M. González Dec. ¶ 7. Those applications will
5 not protect such individuals from being arrested and jailed by ICE officers, and those who applied
6 affirmatively remain vulnerable to both detention and deportation (including possibly even summary
7 deportation). Tolchin Dec. ¶ 23. Some will lose other alternative pathways to permanent status as a
8 result of their TPS termination. *See, e.g.*, Arape Rivas ¶ 5; Tolchin ¶ 21.

9 Many other Venezuelan TPS holders fled in recent years not due to targeted threats to their
10 life and safety that would qualify them for asylum, but because their country was in economic and
11 political ruin. Young Dec. ¶¶ 16, 19; Ferro Dec. ¶ 9; Greenslade Dec. ¶ 7; Ex. 27. TPS provides
12 humanitarian protection for such individuals, as people can benefit from it if they cannot safely
13 return, even if they do not fit the stringent legal requirements of asylum. *See* Tolchin Dec. ¶¶ 16–19,
14 23. Such individuals face the imminent loss of legal status and work authorization as a result of
15 Defendants’ actions. These injuries are severe and irreparable. *See Padilla v. Kentucky*, 559 U.S.
16 356, 373 (2010) (describing “[t]he severity of deportation” as “the equivalent of banishment or
17 exile” (citation omitted)); *Vargas v. Meese*, 682 F. Supp. 591, 595 (D.D.C. 1987) (recognizing denial
18 of “the benefits of protection from deportation and work authorization, as well as the right to travel
19 outside this country without forfeiting these benefits” is irreparable harm).

20 Most devastating to many TPS holders is the prospect of family separation. Many
21 Venezuelan TPS holders could be separated from their U.S. citizen children and other family
22 members, while others will be forced to bring their U.S. citizen children to an unknown country
23 facing political and economic collapse. M.R., for example, shares custody of her youngest
24 daughter—a U.S. citizen in kindergarten—with her father. Were she to lose TPS status and be forced
25 to leave, she and her daughter’s father would face an impossible choice—either separate the girl
26 from her mother or send her to Maduro’s Venezuela. M.R. Dec. ¶¶ 17, 19. Many other Venezuelan
27 TPS holders will face similarly impossible choices if the decisions take effect. M.H. Dec. ¶¶ 19, 21–
28 23; Arape Rivas ¶¶ 13, 20; M. González Dec. ¶¶ 9, 12; Guerrero Dec. ¶ 12. The Ninth Circuit has

1 repeatedly found family separation constitutes irreparable harm. *See, e.g., Stanley v. Illinois*, 405
2 U.S. 645, 647 (1972) (“[P]etitioner suffers from the deprivation of h[er] child[], and the child[]
3 suffer[s] from uncertainty and dislocation.”); *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir.
4 2017) (identifying “separated families” as irreparable harm); *Leiva-Perez v. Holder*, 640 F.3d 962,
5 969–70 (9th Cir. 2011); *Ms. L v. ICE*, No. 3:18-cv-00428, Dkt. 83 (S.D. Cal. June 26, 2018).

6 The TPS terminations will also inflict severe economic harm on TPS holders. Without
7 employment authorization from TPS, many will no longer be able to support themselves or their
8 families. M.R., for example, lives with her two daughters and mother. She, her mother, and her older
9 daughter hold TPS, while her younger daughter is a U.S. citizen. She supports the whole family by
10 holding down two jobs, one of which is a full-time job in health care. If she loses TPS, and along
11 with it her work authorization, the whole family will face financial ruin. Her mother suffers from
12 high blood pressure, while her elder daughter has diabetes. Both rely on M.R.’s income for their
13 healthcare needs. M.R. Dec. ¶¶ 7-12, 16. She has suffered increasing anxiety as the TPS termination
14 date nears. Thousands of other TPS holders feel the same way. *See, e.g., E.R. Dec. ¶ 17; Vivas*
15 *Castillo Dec. ¶ 25; Guerrero Dec. ¶ 14; Purica Hernandez Dec. ¶ 9; A.V. Dec. ¶ 14*. Others will lose
16 the ability to pursue higher education or job training. *See, e.g., González Herrera Dec. ¶¶ 9, 14;*
17 *Guerrero Dec. ¶¶ 15, 22*. Without stable employment, some will lose homes or other material assets.
18 *See, e.g., M.R. Dec. ¶ 16; E.R. Dec. ¶ 17; Guerrero Dec. ¶ 24; Arape Rivas ¶ 16; M. González Dec.*
19 *¶ 13*. The “loss of opportunity to pursue one’s chosen profession constitutes irreparable harm.” *Ariz.*
20 *Dream Act Coal. v. Brewer*, 855 F.3d 957, 978 (9th Cir. 2017); *see also Meese*, 682 F. Supp. at 595
21 (recognizing denial of work authorization as irreparable harm).

22 TPS holders will also, in many cases, lose drivers’ licenses, which are tied to legal status in
23 many states. M.H. Dec. ¶ 18; Tolchin Dec. ¶ 23. The loss of the legal right to drive limits their
24 ability to work, care for children, and do basic tasks like shop for groceries. *See, e.g., Arape Rivas*
25 *¶ 17; M.H. Dec. ¶ 18; A.V. Dec. ¶ 14; Vivas Castillo Dec. ¶¶ 15–17, 25*. Others will lose access to
26 essential health care. *See, e.g., M.R. Dec. ¶¶ 4, 15; M.H. Dec. ¶¶ 8, 22–23; E.R. Dec. ¶ 22; Palma*
27 *Dec. ¶ 39*. Lost freedom of movement and access to health care are irreparable harms. *Ariz. Dream*
28 *Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014) (loss of driver’s licenses as irreparable

1 harm).

2 Lastly, Defendants' termination of TPS for Venezuelans is inflicting severe, continuing
3 emotional harm on TPS holders and their family-members. For both TPS holders and their families,
4 the consequences of the TPS terminations are enormous and multi-faceted. TPS holders have lost the
5 security of knowing they will be able to live and work safely and freely in the United States so long
6 as conditions in Venezuela remain unsafe. As a result, they are already experiencing resulting
7 anxiety, depression, and fear. *See, e.g.*, A.V. Dec. ¶¶ 12–13; M.R. Dec. ¶¶ 14, 18; M.H. ¶¶ 19–20;
8 E.R. Dec. ¶¶ 15–16, 19; Guerrero Dec. ¶¶ 18–20, 23; Arape Rivas Dec. ¶ 21; Vivas Castillo Dec.
9 ¶¶ 20, 24; González Herrera Dec. ¶¶ 11–13, 15–16; Purica Hernandez Dec. ¶ 7; M. González Dec.
10 ¶¶ 12, 16; Palma Dec. ¶¶ 32, 36–37. The U.S. citizen children of TPS-holders are likewise suffering
11 severe emotional stress from the possibility of being uprooted from the only country they have
12 known or being forcibly separated from one or both parents. *See, e.g.*, M.R. Dec. ¶ 19.

13 These harms are compounded because Venezuelan TPS holders recognize that the
14 government's actions against them are motivated by animus. Many describe being fearful of leaving
15 the house, speaking Spanish, or disclosing their nationality due to the stream of racist invective
16 President Trump and others have spewed against them. *See, e.g.*, Guerrero Dec. ¶¶ 19, 26; Arape
17 Rivas Dec. ¶ 23; E.R. Dec. ¶ 23; Purica Hernandez Dec. ¶ 7; González Herrera Dec. ¶ 17. These
18 emotional and psychological injuries indisputably constitute irreparable harm. *See, e.g., Chalk v.*
19 *United States Dist. Ct.*, 840 F.2d 701, 709–10 (9th Cir. 1988) (explaining “emotional stress,
20 depression and reduced sense of well-being” can constitute irreparable injury); *Norsworthy v. Beard*,
21 87 F. Supp. 3d 1164, 1192 (N.D. Cal. 2015) (“Emotional distress, anxiety, depression, and other
22 psychological problems can constitute irreparable injury.”); *Petties v. D.C.*, 881 F. Supp. 63, 68
23 (D.D.C. 1995) (recognizing stress, anxiety, and deteriorating scholastic performance caused by
24 uncertainty about government action constitutes irreparable harm).

25 Defendants' unlawful termination of TPS imposes and will continue to impose irreparable
26 harms on Venezuelan TPS holders, their families, and their communities. Absent judicial
27 intervention, the severity of the harms Venezuelan TPS holders face will grow.

1 **III. THE BALANCE OF EQUITIES AND PUBLIC INTEREST WEIGH HEAVILY IN**
2 **FAVOR OF POSTPONEMENT.**

3 The final two considerations—the balance of the equities and the public interest—merge
4 when the government is a party. *League of Wilderness Defs./Blue Mountains Biodiversity Project v.*
5 *Connaughton*, 752 F.3d 755, 766 (9th Cir. 2014). In assessing these factors, courts consider the
6 impacts of the relief sought on nonparties as well. *Id.* Where plaintiffs establish “a likelihood that
7 Defendants’ policy violates the U.S. Constitution, they also “establish[] that both the public interest
8 and the balance of the equities favor” interim relief. *Brewer*, 757 F.3d at 1069. So too for APA
9 violations: the “public interest is served when administrative agencies comply with their obligations
10 under the APA.” *HHS*, 281 F. Supp. 3d at 831–32 (finding “the public interest favors the granting of
11 a preliminary injunction”) (quoting *N. Mariana Islands*, 686 F. Supp. 2d at 21).

12 Other public interests and equities overwhelmingly support Plaintiffs’ motion. The harms
13 resulting from the termination of TPS extend well beyond the TPS holders and their families,
14 causing myriad social and economic harms to communities across the United States. *See, e.g.*, Ferro
15 Dec. ¶¶ 13–15, 18–19. Venezuelan TPS holders pay millions of dollars in tax and contribute millions
16 more to Social Security every year. Lost employment alone could cost the national economy \$3.5
17 billion dollars annually. Card Dec. ¶ 9(i); *see also* Watson & Veuger Dec. ¶¶ 20–22; Perez Dec.
18 ¶¶ 5–6; Morten Dec. ¶¶ 4–8. Courts may consider “indirect hardship” when issuing injunctive relief.
19 *Hernandez*, 872 F.3d at 996.

20 In contrast, Defendants will suffer no material harm. Any assertion that the continued
21 presence of TPS holders in the United States causes harm to the national interest⁵ is undercut by the
22 recognition that all TPS applications are individually reviewed by USCIS and all applicants submit
23 to a background check.⁶ Defendants’ reliance on assertions that Venezuelan TPS holders are, or are
24 associated with, a Venezuelan gang rests on a lie. No evidence supports that specious claim. Dudley
25 Dec. ¶¶ 13–19 (TdA “appears to have no substantial U.S. presence and looks unlikely to establish
26 one,” and no evidence of TPS holders’ involvement with TdA); *see also* Watson & Veuger Dec.

27 ⁵ Termination of the October 3, 2023 Designation of Venezuela for Temporary Protected Status, 90
28 Fed. Reg. 9040-01, 9041 (Feb. 5, 2025).

⁶ 8 U.S.C. § 1254a(c)(2)(B)(i).

¶ 15; Young Dec. ¶¶ 3, 11–12 (“characteriz[ation of] Venezuelan TPS holders as dangerous criminals . . . is a false narrative”). Indeed, local government officials pleaded for TPS to be granted more broadly to ensure that the many Venezuelans who had fled to the United States could work legally and would not become dependent on public benefits or private handouts. Defendants’ actions would create several hundred thousand new undocumented people in a matter of weeks, thus damaging the public’s interest in the economic and social benefits that come with lawful immigration status. *See e.g.*, Watson & Veuger Dec. ¶ 16 (adverse health consequences); Ferro Dec. ¶ 10 (TPS allows Venezuelans to work rather than rely on government benefits, and enhances public safety by reducing fear of interacting with authorities).

Most important for purposes of the equity analysis, if this Court orders a postponement to preserve the status quo, then Defendants’ ability to enforce the relevant TPS decisions will merely be delayed pending resolution of this case on the merits. Put another way, if Defendants’ conduct was lawful, then the termination decisions will go into effect after a slight delay. In contrast, if Plaintiffs prevail on the merits, then the public interest will have favored them, as Defendants have no interest in enforcing unlawful or unconstitutional decisions. *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (“[The government] cannot suffer harm from an injunction that merely ends an unlawful practice.”).

CONCLUSION

The Court should postpone the effective date of the challenged decisions.

Date: February 20, 2025

Respectfully submitted,

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